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Volume 19

# TRANSCRIPT OF RECORD

## SUPREME COURT OF THE UNITED STATES

### OCTOBER TERM, 1947

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vs.
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ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 20, 1947
CERTIORARI GRANTED MARCH 10, 1947

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**(Testimony of Witnesses contained in pages 44803 to 46711 of the Original Transcript.)**

44803 Washington, D. C.,
Thursday, September 26, 1940.

44804 FRED R. FAIRCHILD thereupon resumed the stand and testified further as follows:

44806 By Mr. Bond:

Professor, when we adjourned last night I had just propounded a question to you which appears in the record on page 44798. To save the time of reading it again, I will show you the question as transcribed and ask you to give your answer.

A. I would not agree with this answer by Dr. Fetter.

44808 A. It would not be my conclusion that it is the essence of basing-point practice that there is cooperation and agreement. It is my conclusion that the basing-point system is a natural method which might very well arise out of conditions of competition without collusion or agreement: I am not quite sure what is
44809 meant by "mutuality of behavior," but assuming that it implies something in the way of agreement or collusion I would not agree that that is inherent in the basing-point system.

The statement that the basing-point mill refrains from reducing its price—the "basing-point mill refrains from reducing its present raids into its territories," that doesn't seem to me to be correct.

A. When a mill refrains from reducing a price, whether or not in connection with the raids of competitors into its territory, I infer that that mill is acting according to its own judgment as to what is to its own best
44810 interest, and collusion would not be inferred from the fact that after a raid into its territory by a competitor, which met its price, this particular mill chose to stand pat on that delivered price.

Furthermore, the statement that when the mill's territory is invaded—I wonder if this is the same. I thought there was something about permitting the other mill to invade its territory. My recollection may not be accurate on that.

By Mr. Bond:

Q. (Looking at transcript): No, that seems to be correctly transcribed.

A That the rest of this answer seems to imply that under these conditions when the mill's territory is invaded the mill does not behave like a competitor but like a conspirator. The statement here is somewhat ambiguous, I think, but I would take it to mean that because it does not reduce its price following invasion of its territory it is therefore behaving like a conspirator rather than a competitor. It is clear to me that a competitor may, under certain conditions, decide in his own best interest not to lower his price at a certain destination, but I would draw no inference whatever that he was acting like a conspirator in so doing.

44811 Q. Professor, on page 17776, this question was asked of Dr. Fetter:

"If the statement were made to you that the public interest is best protected by the long-established practice of meeting competition in the sale of cement, what would be your reaction as an economist to such a proposition?"

Dr. Fetter testified in answer there to:

"If the long-established method means the basing-point method, I would disagree quite fully. I believe that it is not a method in accord with the public interest nor in the long run in the interest of the industry."

A As I think of the public interest in connection with the manufacture and marketing of products, I should say that that interest is best served when such manufacuring and marketing is in the hands of private enterprise, and is operating under conditions of competition. It is my opinion that the basing-point method as it has been described in various hypotheses before me contribute toward competition, and is more in harmony with competition than any alternative method of marketing which I can conceive of as being practicable for an industry of this

44812 sort. I draw the conclusion, therefore, that the present basing-point method of distribution is not contrary to the public interest, but, so far as the hypotheses before me go, is definitely favorable to the public interest.

*Cross-Examination*

By Mr. Wooden:

Q. Dr. Fairchild, your last answer is based upon the assumption or conclusion, is it not, that the method of marketing employed in the cement industry is competitive in character and not collusive in character, isn't it?

A. I have drawn that conclusion from the hypothetical statements put before me, or rather, drawn the conclusion that those hypotheses do not set up an inference of collusion or combination, and are quite compatible with a condition of competition.

Q. Of course, if you were to assume that the method of marketing employed in cement was collusive in character, then your answer would be the opposite, wouldn't it?

44813 A. Not quite. I can consider industries in which competition may not be able to operate, in which monopoly may be the natural situation. I think it is generally agreed that the railroad industry is one in which a high degree of monopoly is natural, and if monopoly is natural or inevitable then I would not say that in that particular case the situation was against public interest because there was monopoly. I have no reason to think that the cement industry is one in which monopoly is inevitable.

Q. What was that last? I did not get it.

A. I have no reason to think that the cement industry is one in which monopoly is inevitable, so far as the hypotheses before me goes.

Q. Then, so far as the cement industry, your answer would be the opposite if you were to assume that the method of marketing employed is collusive in character rather than competitive?

A. No, sir; I would still be ignorant as to the fact as to whether or not monopoly was inevitable in that industry.

Q. Well, didn't you say a moment ago that you did not consider that it was inevitable in the industry?

A. Not quite. I said that I had no hypothesis before me which would show that it was necessarily monopolistic.

Q. Well, have you assumed in any of your answers to any of the questions on direct that monopoly was inevitable in the cement industry?

44814 A. No, I have not.

Q. Haven't you assumed, as a matter of fact, tht it was not inevitable in the cement industry?

A. I have in all of my answers gone back to the hypotheses put before me, and I have been asked whether those hypotheses indicated an inference of monopoly or collusion, and have testified that they did not. I have not given any answer, I think, which expressed an opinion, as a matter of fact, as to whether there is or is not monopoly.

Q. You do not consider, then, that such conditions as you testified about regarding fixed capital costs and high overhead costs as being something that leads inevitably to monopolistic conditions?

A. No, not inevitably.

Q. And not even inevitably in that direction?

A. That is the same question, is it not?

Q. Not quite.

A. You mean in the direction of monopoly?

Q. Monopolistic practices.

A. No, not inevitably.

Q. It does, you might say, predispose to the development of monopolistic practices, doesn't it?

A. No, sir; I would not go so far even as that.

Trial Examiner Norwood: Does it tend to monopoly?

The Witness: No, that seems to be a still stronger 44815 term. I would not accept that.

By Mr. Wooden:

Q. You would not think that predisposed in a business man's psychology toward the development of monopolistic practices?

A. No, Mr. Wooden. It seems to me that to express the opinion that conditions predispose a tendency toward monopoly you would have to have a good many more conditions stated than were contained in your question.

Q. Well, assuming that, just treating those conditions alone, such as high overhead costs and fixed capital costs, and things of that character, isn't there a natural reaction observable among business men as you have studied their activities?

Mr. Bond: I object.

Mr. Wooden: Let me finish, please.

Mr. Bond: I thought you had.

Trial Examiner Norwood: Let him finish the question.

By Mr. Wooden:

Q. That predisposed them to take cooperative steps toward protecting their investments that represent these high capital costs and high overhead?

44816 A. I am sorry but I do not think there is enough definite hypotheses in that question to permit me to make an intelligent answer. I do not know what all the conditions are as stated in the general phrase, and such conditions, or whatever the words used were, and I do not feel prepared to express judgment as to the reactions

of business men in general to those conditions with-
44817 out knowing far more about the particular situation in which any business man might find himself.

By Mr. Wooden:

Q. Do you agree with this statement: "That there is a constant effort of the captains of industry when competition becomes especially keen and irksome to find escape through some form of combination, making use of every possible device which human ingenuity with millions at state can devise"?

A. That is such an absolute and dogmatic statement that I could not agree with that without material
44818 qualification.

By Mr. Wooden:

Q. Didn't you make that statement yourself in your textbook on elementary economics on page 70, of Volume II (handing book to the witness)?

A. That is a correct quotation of my statement which taken out of its text makes it appear more positive than I would now agree to by itself. This is in the passage which is giving on the one side the forces that continue toward monopoly and then matching it by other forces that work the other way. Coming out of its context as a single statement alone, I would hesitate to accept it without, as I said, without qualification.

Q. What is your qualification?

A. I think the necessary qualifications are contained here.

Q. What is your qualification you wish to make?

A. The first sentence in that paragraph says: "At first glance the forces favoring monopoly appear very strong," and the rest of the paragraph is intended to give what the first glance appeared to be, the forces tending towards monopoly. That is qualified in considerable passage that follows—

Q. Well, didn't—

Mr. Bond: Let him finish.

Trial Examiner Norwood: Let him finish.

Mr. Bond: Let him finish.

By Mr. Wooden:

44819 Q. Go ahead. Talk all you want.

A. Now in the paragraph beginning in the middle of page 71, and I go to the limits—to monopoly, which

should call attention to various forces which counteract this effort of the captains of industry to escape from the irksomeness of competition through some form of combination, and—

Q. Do you mean—

Mr. Bond: Let him finish, please.

By Mr. Wooden:

Q. Go ahead. Read the whole book.

A. —and I submit that I would not have published that one statement alone without the other side of the picture which follows in succeeding paragraphs.

Q. Do you mean to say, then, that the forces that run in the opposite direction and the forces making for monopoly that you describe are always just a complete offset and neutralizing,—have a neutralizing effect, completely neutralizing effect?

A. No. I mean to say that in these tendencies there are forces working both ways, some in one direction and some in the other.

Q. Well, didn't you say that it was the constant effort of captains of industry, as I read you, wasn't that one of the forces favoring monopoly which you were stating appeared very strong in the same paragraph?

A. Which I stated appeared very strong?

44820 Q. Yes, sir.

A. At first glance.

Q. Yes.

A. Yes, I stand by that quotation.

Q. Then I take it that you are now willing to say that there is a constant effort of business men to find escape from keen and irksome competition through every possible device.

Mr. Leisure: Now, one minute, please.

By Mr. Wooden:

Q. Which human ingenuity with millions can devise.

44821 A. Yes, I think, again calling attention to the qualifications that appear in the context close to that statement, that I agree to that. It is true that business men seeking their own interest when they find that competition is irksome and burdensome and is compelling them to take profits less than they might otherwise would naturally and do naturally seek to escape, and I have no rea-

son to think that business men are free from the temptation, motive to seek escape from combination if they can do so.

By Mr. Wooden:

Q. And you recognize, do you not, Doctor, that frequently that desire to escape has led business men to indulge in cooperative effort to relieve the keenness and irksomeness of competition?

44822 Trial Examiner Norwood: Overruled.

A. Yes. I am aware as a matter of historical fact that business men have from time to time engaged in combination.

By Mr. Wooden:

Q. Are you unwilling to concede at this time that the existence of high overhead and high capital costs in an industry may tend to sharpen that desire among business men to relieve themselves from the rigors of competition by cooperation?

A. Yes. I am prepared to state that in the presence of high overhead costs and large capital investment is one of the things that a business man would have in mind if competition became irksome, and if he saw a possibility of escape through combination.

Q. Now, is the purport of your direct testimony, Doctor, to the effect that this marketing method employed in the cement industry could be or might be the result of natural non-collusive competitive forces, or is it that in your opinion as an economist it is such a result?

A. My testimony includes a great many answers to a great many questions. I will still try to meet the spirit of your question, and answer it this way: I think all of my answers have been based on certain hypothetical statements made to me in connection with the question, and I have testified that those conditions as thus stated to me do not set up in my mind an inference of collusion or combination and described a condition which in my
44823 mind could have been—could have resulted from a situation of competition.

Q. Were you intending in your direct testimony to go further than to state that it might be so?

A. I was doing my best to answer the question on the basis of the hypotheses put before me.

Q. I think my present question is very clear. Can't you answer it?

The Witness: Could I have it read?

Trial Examiner Norwood: Read it.

(Question read.)

44824 Mr. Wooden: I want this put on the record, Your Honor, since that went on the record.

I object to an interruption and an objection to a question as clear and short as that, and I submit that its only purpose could be to give the witness time to think it over.

Mr. Bond: Well, for my own justification, if Your Honor please, I say in all sincerity as a member of the bar that I asked in good faith because I do not know and did not know what the word "it" referred to.

Trial Examiner Norwood: Well, it seems to me that when the direct examination has proceeded as it has, and after all the time that these witnesses have taken in their preparation, that the cross-examiner should not be interfered with except when it is absolutely necessary.

Now, in the case of where there might be a question of whether a question of the examiner is clear, I think it should give the witness a chance to see if he understands it; don't tell him he does not understand it for certain reasons, and so on, and in the course of stating those reasons he has time to think it over, or he gets some

44285 valuable suggestion, and that might not be the intention, but that is sometimes the result when it is not the intention, and sometimes it is the result that it is the intention.

Mr. Bond: If it is misunderstood, then a categorical answer leaves the misunderstanding.

Trial Examiner Norwood: Well, you can straighten that out.

Mr. Wooden: Why not let the witness say whether he understands it or not.

Mr. Leisure: If Your Honor please, as to whether we are interfering with the witness on that point, for instance—before the "for instance"—we are making objections which we believe should be made in a court of law, and take, for instance, the last line of examinations that Mr. Wooden has been conducting, asking about whether or not business men would tend to do certain things, compare that with any other proceeding where a man is charged with anything, whether it is speeding in an automobile, or what it might be, what would any court say to a question, "Don't men generally tend to speed in auto-

mobiles?'' when one man is being charged with a specific thing. Now, that is—

Trial Examiner Norwood: That is not a parallel case. That is not a fair comparison. This man is an expert and he is giving his opinions here about these
44826 various things.

Mr. Leisure: Precisely.

Trial Examiner Norwood: Now, if Counsel cannot distinguish between those, why, I am much surprised.

Mr. Leisure: Well, to our mind the questions that have been put to him are improper. Now, we are not doing—my point is this: We are not doing it with the idea of interfering. We are doing it with the idea that when questions are asked which are improper it would be highly improper for us to remain in our seats and not object to it.

Trial Examiner Norwood: Well, there has been considerable interfering with the cross-examination of past witnesses, and I am going to see if I can prevent it. I think it is fair for me to do so if I can.

Proceed.

By Mr. Wooden:

Q. Mr. Witness, do you understand the last question I put to you?

A. There has been so much discussion intervening that I do not even remember the last question.

Trial Examiner Norwood: Read it.

Mr. Wooden: Read the question.

(Question, answer, and question read.)

A. The present question says something about it having been so. I suppose that refers to something men-
44827 tioned in a previous question.

Now, there has been—

By Mr. Wooden:

Q. Yes, it did.

A. There has been so much discussion I have frankly forgotten what was in the preceding question.

Mr. Wooden: Suppose you read that.

(Record read.)

A. You would not be willing, would you, Mr. Wooden, to rephrase that question by substituting something for "it."

By Mr. Wooden:

Q. If necessary, I will try.

In answering the various hypothetical questions put to

you on direct, when you testified that a method of marketing employed in the cement industry, as you understood from those questions, could be or might be the result of natural non-collusive competitive forces, did you intend to go any further than to state or testify that it could be or might be so?

A. I was asked several questions on those hypotheses. One of them was about what you have included in your present question, and my answer to that was that in my opinion these conditions could very well have resulted from a condition of competition.

Q. I remember that.

A. I was asked other questions in which I said that it appeared to me as what might be expected as a
44828 natural historical result of the industry as described to me, and I also said that the conditions laid down before me in the hypotheses did not set up any inference of collusion.

Now, I believe you are asking me if I meant to imply more than all of that, and it is hard for me to say I did not, because your question has been directed to all of my testimony, and I have no doubt that in the answers to some of the other questions I went beyond those three points.

Q. Did you intend to testify on direct that in your opinion as an economist the method of marketing employed in the cement industry as described to you in the hypothetical questions was not and could not be the result of collusive activity?

A. I was never asked that question.

Q. I am asking it now.

A. Oh.

Q. That is why I am asking it.

A. Well, you are asking me what I testified to in my direct examination.

Q. I am asking you whether you meant your direct testimony to be taken in that sense.

A. I think I meant it to be taken precisely as I gave it in answer to those particular questions. If you are asking me another hypothetical question I will do my best to answer it.

Trial Examiner Norwood: Read the question.

44829 (Question read.)

Trial Examiner Norwood: Do you want the previous one read?

Do you understand that, or do you wish the previous question read?

The Witness: I think I understand it, and I think I have answered it.

Trial Examiner Norwood: Can't you answer it categorically?

The Witness: I think I have answered it. I am really trying to be cooperative, Your Honor.

Trial Examiner Norwood: He asked you a question going to the intention.

The Witness: But it seems to me I have been asked whether in my direct testimony I meant something other than what I said in answer to those specific questions.

By Mr. Wooden:

Q. That is exactly it.

Trial Examiner Norwood: You can answer that "yes" or "no," it seems to me.

The Witness: It seems to me I have already answered that, that in my direct testimony I was undertaking to answer those particular hypothetical questions on the basis of the hypotheses stated, and was not intending to do more than that.

44830 By Mr. Wooden:

Q. You did not intend, then, to have your direct testimony taken to mean that in your opinion as an economist, the method of marketing employed was not the result of collusive activity?

A. Well, again, I do not want to seem to be obstructive here, but, frankly, I did not intend my answer to be taken to mean anything except what I said in the answer.

Q. I am trying to find out what you meant by your answers. Can't you cooperate to that extent?

Trial Examiner Norwood: Did you mean to go any further than expressing your opinion on the hypothesized situation?

The Witness: That I understood was all I was asked to do, Your Honor.

Trial Examiner Norwood: Well, then, would your answer, then, be "no" or "yes"?

The Witness: Well, I have had to elaborate my—

Trial Examiner Norwood: Did you mean to go further or did you not mean to go further than that?

The Witness: Well, you see, the Counsel has said "your

answers." Now, I made any number of answers in my direct testimony, and part of my answer to his question has been to call attention to the fact, and say that I cannot say what I meant in one answer which he seems to consider as synonymous to his previous question,
44831 which says "all of your direct testimony." It is that which troubles me.

Trial Examiner Norwood: You do not feel able to sum up the entire—can't recall your testimony with respect to that one point?

The Witness: Why, I think I did that in answer to Mr. Wooden's first question. I said then I was a little troubled by his reference to all of my direct testimony, but that I would try to meet him in the spirit of his question and make a summary, which I did to the best of my ability.

By Mr. Wooden:

Q. Do you mean to say, Doctor, that you do not know now whether you intended it one way or intended it the other?

A. No, I do not mean to say that.

Q. Well, then, if you know which way you intended it why can't you tell us?

A. I think my answer is on the record, and I intended it to the best of my ability as it is there stated. Again, I am saying "answer" as you are using the term, according to a good many answers.

Q. Are you willing to now testify that in your opinion as an economist the method of marketing employed in cement—as you understood it, when you gave your testimony—was not or could not have been the result of collusive activities?

44832 A. Are you referring to my answer, for instance, to the defense long hypothetical question?

Q. Taking the sum total of your testimony about the method of marketing.

A. Oh, yes, I can—

Q. You say you knew what you intended; now tell us what you intended.

A. I can answer that on the basis of the hypothetical statements put before me. I can testify that in my opinion those conditions could not have arisen out of a state of monopoly or collusion.

Q. And you did so intend to testify?

A. I was not asked that question.

Q. Well, do you now so testify?

A. Yes, I do.

Q. That in your opinion they could not have arisen out of collusive activity?

A. Yes. There was in those various hypotheses put before me certain ones which are not consistent with the condition of monopoly or collusion.

Q. You are testifying here in the belief, then, as an economist, that the method of marketing employed in cement is in the public interest because you do not believe it could have developed out of any collusive activity?

A. That is not what I have testified. My answers have still been related to a particular hypothesis put
44823 before me, and the question about my opinion as to public interest also referred back to those hypotheses.

Now, I think you are asking me about my knowledge, as a matter of fact, as to conditions in the cement industry.

Q. No, no. I am testifying—I am asking you to testify about what is in your own mind, and that is whether you testified here in the belief, as an economist, that —I will separate the two questions.

First, did you testify in the belief that the method of marketing employed in cement is competitive and could not be collusive?

A. No, I testified that the conditions laid down in the hypotheses before me described a condition which could result from competition, and it did not set up an inference of collusion, and I have gone further now in answering your question by saying that those same hypotheses described a situation in which all of those conditions could not have arisen out of a state of monopoly or combination or collusion, but my answers have all been based on hypothetical statements laid before me.

Q. Do you agree that some of those conditions could have arisen out of collusive activity?

A. Yes.

Q. And which ones do you have in mind when you say that some of them could have arisen out of collusive activity?

44834 A. Would it be possible for me to have a copy of the hypothetical questions?

Q. Yes.

Mr. Bond: Do you mean, Professor, the first long hypothetical question?

The Witness: I think that will—

Mr. Bond: Describing the practices of the industry?

The Witness: I think that will cover it.

(Mr. Bond hands a copy of the question to the witness.)

A. Now, could I have the question again?

Trial Examiner Norwood: Read it.

(Question read.)

A. I do not know whether you want me to run through this whole series of hypotheses, or not.

By Mr. Wooden:

Q. Yes.

A. It would be probably easier to list those that could not have arisen out of combination or collusion.

Q. After you tell us which ones could have, of course I suppose it goes without saying that the remainder could not have.

A. "Cement is a homogeneous commodity." Now, that could perfectly well result from a condition of monopoly.

Q. You are using "monopoly" in the broad sense, including collusion, are you?

44835 A. Yes. I do not think I need to distinguish between monopoly and collusion. I see no reason why under monopolistic or collusive industries you could not have a homogeneous product.

"There are approximately 150 cement mills scattered throughout the United States, owned by more than 50 separate independent companies." That might be possible under a condition of collusion or combination. It would seem a little inconsistent with monopoly; I should think that would probably be one mill.

"Cement mills usually have large capacities with large capital investments." That might be possible under a condition of monopoly.

"The capacity of most mills exceeds the local demand." The same.

"Freight is a substantial part of the cost of cement delivered to the point of use or resale." That would still be true.

"The volume of the demand for cement varies in each locality from year to year and month to month." I do not see why that would not be consistent with a condition of monopoly.

"Sometimes there is a large demand in a given market and at other times there is a small demand." All right.

"The manufacturers of cement which market their
44836 product in any given territory are engaged in a struggle for tonnage." That would not be consistent with a condition of monopoly if it means they are engaged in struggle against each other, which I rather take the word "struggle" to mean. If it means they are just actively pushing their campaign to increase the use of cement we might expect that also under the conditions of monopoly, but I think the word "struggle" implies that there is a struggle between mills which would not be natural to expect under a condition of monopoly or collusion.

Q. In other words, you assumed that meant a competitive struggle in good faith?

A. Well, I should think it meant an attempt of the different mills in rivalry with other mills, each one to extend its tonnage.

Q. And enlarge the proportion of its business?

A. Very likely.

Q. All right.

Go ahead.

A. "There are a very large number of buyers, and they are scattered throughout the country. At any point of substantial cement consumption there are several buyers. Buyers of cement are well informed."

Q. Keep clear, Doctor, if you will, what I want are the portions of that that you had in mind when you said
44837 that they could have developed out of collusive activity.

A. Yes. Well, I am trying to save time by not saying so on every item. I can lump them.

I think the conditions laid down in the second paragraph could.

Q. What do you mean by the "second paragraph."

A. The second paragraph of the long hypothetical question.

Q. Beginning with what sentence?

A. "That there are a very large number of buyers and they are scattered throughout the country."

Q. All right. Go ahead.

Will you mind looking at the record that contains the hypothetical question and refer to it by page and paragraph.

A. Certainly.

Q. And by line and page (handing transcript to the witness).

A. The sentence beginning on line 17.

Q. What page?

A. Page 44613. Obviously it is contrary to a condition of monopoly or collusion.

Trial Examiner Norwood: What is that?

The Witness: "In quoting prices the manufacturer usually takes into consideration the prices which have been quoted by his competitors for delivery at the destinations in question."

By Mr. Wooden:

44838 Q. You say that people that were in collusion with each other would never do that?

A. Well, I said that I was not distinguishing between monopoly and collusion and combination here.

Q. Well, I though we were agreed that we were not going to distinguish between monopoly and collusion in this answer.

A. Well, then, I will have to draw that distinction in this particular case because in the case of a pure monopoly—in the case of monopoly, of course there would not be competitors. It is possible that there might be competitors who have collusive agreements relating to certain limited factors, and who still might be quoting separate prices. I think I will have to make my answer a little stronger on that sentence, because if there were collusion I should think one of the most natural things would be done would be to enter into an agreement to divide the territory, and in that case there might not be competition for delivery of cement at any particular place.

Q. You can't conceive of a combination that would not divide territory like that, but would just have an understanding about the delivered prices?

A. Well, the word "combination," of course, is, of course, a very elastic term, and I do not know how far you would go. If competing mills got together and agreed on rates of wages, or on hours of labor, I do not know whether you would call that a combination or not. I was not

44839 thinking of that sort of agreement as being employed. I thought it meant something more extreme than that—

Mr. Bond: May I inquire whether the witness should

not be permitted to finish the question which was put to him? He has been interrupted by new questions a great many times; it seems to me we should have a complete answer to the pending question.

Trial Examiner Norwood: I think that the examination is proceeding in a rather orderly way.

Go ahead.

A. Will repeat, then, that the term "combination and collusion" is a somewhat vague term, and I have had, therefore, to qualify my comment on the sentence beginning on line 17 by saying that if there were collusion it is quite probable that that would lead to a division of territory, and so this condition would not be consistent with that state of collusion.

Of course, it would not be consistent with a state of monopoly.

By Mr. Wooden:

Q. In other words, you think that collusive agreements regarding the price probably take the form of division of territory?

A. I said might very likely take that form.

Q. Well, do you mean it is no more likely than other forms of agreement?

44840 A. That is very hard for me to make such a comparison without other—

Q. Weren't you making comparison?

A. No, I was not. I was saying that it was very likely that that would happen, and I wanted to make my statements in good faith recognizing that that would be a probable form of collusion. I did not say it would be more likely than any other form, and did not mean to say that.

Q. Go ahead.

A. Now, there follow several sentences here which appear to be describing the basing-point system, and without specifying every particular sentence, I may say that in my opinion the basing-point system with freight absorption is not consistent with monopoly.

Q. Or collusion?

A. Nor with collusion, again reminding you that in my opinion collusion would very likely lead to a division of sales territory, again recognizing that collusion might relate to some trivial matters of practice which I am not considering are pertinent.

Q. All right. Go ahead. What other portions are consistent with the hypothesis of collusive activities?

Trial Examiner Norwood: I think we will take five minutes' recess.

(There was a short recess taken.)

44841 Trial Examiner Norwood: Proceed.

By Mr. Wooden:

Q. Will you go ahead, Doctor, with your statement on the portions of the long hypothetical question which in your mind could have been the outcome of collusive activity?

A. The flat and zone arbitrary prices naturally are not inconsistent with monopoly or collusion.

Q. As I understand it, in the same paragraph there is a description of a most prevalent pattern being the lowest combination of some base price plus freight from the basing point. That, in your opinion, could not have been the outcome of any collusive activity?

A. I undertook to save a little time by saying that any hypotheses here which describe the basing-point system of delivered prices with freight absorption do not seem to me to be consistent with either monopoly or collusion, as it would probably operate.

Q. And, in your opinion, could not have been the outcome of collusive activity?

A. As I think collusion is likely to operate. I tried to make myself clear as to that, because the word "collusion" itself, or "combination" is a pretty broad term, and without specifying every time just what collusive acts or acts of combinations I have in mind the answer might not be entirely specific. So that I am saying through here
44842 that when I say such and such hypothesis is not in my opinion consistent with a condition of collusion I am assuming that—I am having in mind that collusion probably would result in a division of territory between the mills.

Trial Examiner Norwood: You are expressing what you think is probable and not what you think would be possible. Is there a distinction?

The Witness: Yes, Your Honor. I have tried to make clear that an agreement of mills on hours of labor might be called collusion. I do not know whether it would or not. And if that is what is meant by "collusion," why, then, of

course, there is not much point in all this testimony of mine.

By Mr. Wooden:

Q. Doctor, you know we are not concerned here with agreements on hours of labor. It is a question of prices. Now, you mean to say that this most prevalent pattern described in the hypothetical question could not have been the result of collusive activity on prices?

A. Well, I think we are dealing with more than collusion on prices. There are many other factors of marketing than prices upon which collusion could be possible.

Q. Just center your attention upon price collusion activity for the moment.

A. Well, I think price collusive activity would 44843 very probably lead to a division of territory, and, therefore, in that interpretation of collusion I would say that the basing-point system is not consistent with a condition of collusion.

Q. Do you agree with this statement:

"Agreements to maintain prices, to divide profits, to restrict output, to divide the selling field among themselves, to provide for the common use of all patents, and so on, are examples of pooling agreements common to many lines of industry."

A. Yes, I think that is an accurate statement of fact.

Q. And you now say that among those various forms of agreements you think the most probable one is to agree to divide territory?

A. I never said the most probable, Mr. Wooden. I said a probable one. And, therefore, when I am asked to make a definite statement as to whether a certain specific hypothesis is in harmony with or consistent with a condition of collusion, I necessarily have to qualify my answer by recognizing the possible difference in meaning of that word "collusion." I have tried to make my answer responsive and at the same time informative, and, so far as possible, free from ambiguity.

Q. Do you mean to say that it is improbable that competitors will have agreements to maintain prices without dividing territory among themselves?

A. Not quite. I stick to my original statement 44844 that it is probable that they would.

Q. Then, do you say that it is improbable that they would have any other kind of agreement?

A. Improbable that they would have any other kind of agreement? Oh, no.

Q. Well, you mean to say that it is improbable that they would have an agreement to maintain prices without dividing territory?

A. I am not in a position to say that any one of the forms of collusion which I think might naturally arise is improbable. What I have said is that a certain one is probable.

Q. Well, you mean more probable as compared with the others?

A. No. I have tried to express—

Q. You don't mean that an agreement to divide territory would be any more probable than an agreement to maintain prices without dividing territory?

A. I don't think I am qualified to judge as to the relative probability of those different types.

Q. Well, you expressed the opinion. You volunteered the opinion. Now you say you are not qualified to volunteer such an opinion?

44845 Trial Examiner Norwood: Did you volunteer such an opinion previously?

The Witness: I did not volunteer the opinion which is contained in the last question by Counsel.

By Mr. Wooden:

Q. Didn't you state a few minutes ago, Doctor, that in your opinion the most probable form of agreement among competitors was one to divide territory?

A. No, I did not, and I went out of my way to say that I was not calling it the most probable but simply a probable one.

Q. Then, I will ask you, is it any more probable then that they would have an agreement to maintain prices without dividing territory?

A. That is the question which I say I did not think I am qualified to answer. I am not in a position to take a list of the possible forms of collusion and arrange them in rank according to their relative probability.

Q. Would you say that it is less probable that competitors would agree to maintain prices without dividing territory than that they would divide territory?

A. Don't you think, Mr. Wooden, to say that "A" is

more probable than "B" is just the same as to say that "B" is less probable than "A"?

Q. Well, you brought into the discussion the
44846 question of probability.

A. Yes, but not the element of probability—not the element of relative probabilities.

Q. Isn't all probability relative?

A. It may be, but I do not know what the relative probabilities are in particular cases.

Q. Well, let us go ahead.

A. Well, I have got down to line 8 on page 44614.

Well, this sentence I think might possibly describe a condition that will exist under monopoly or collusion, but I do not think it is very probable. I would think that monopoly or collusion would very likely lead to a smaller number of basing-point mills, but that is a matter of probability again.

"These basing-point mills are scattered throughout the country." They probably would be under monopoly, but they might be more concentrated under monopoly than under competiton, so there is a certain qualification to my answer there.

Q. You are again using the word "monopoly" in the sense of collusion, or including—

A. Yes, I am including with monopoly collusion of a really important sort, and not some minor items of collusion.

I think my previous statements can be taken as qualifying these answers sufficiently.

"Each manufacturer can at any time make its
44847 mill or plant a basing-point mill." That, I think, is not compatible with a condition of monopoly or collusion, because I think under most combinations or collusions that liberty on the part of separate mills would be denied or restricted.

The next sentence. "All manufacturers, including those with basing-point mills, shrink their mill nets in
44848 making sales at distant points." I think it very unlikely that that condition would exist under a condition of monopoly or really substantial collusion.

Q. You mean to say that under a collusive arrangement mills would not shrink their mill nets in making sales at distant points?

A. Yes. I think that they would be more likely to en-

ter into an agreement to divide territory. Of course, their mill nets would be different with respect to different destinations. But that is not what I understand is meant by the phrase "shrink their mill nets." I take it that refers to freight absorption when a mill goes outside of its territory to meet competition of another mill.

Q. And you say that that is incompatible with collusion?

A. I think it is not probable under collusive conditions.

Q. It is improbable?

A. It is improbable.

Q. Under collusion?

A. Yes.

Q. All right.

A. I think under substantial collusion or monopoly that particular hypothesis would be unlikely.

Q. Would you say that is true, in your opinion, Doctor, even though that shrinkage in mill nets was a mathematical reflection of an identical delivered price among competitors?

4849 A. Yes, I would say that, remembering always my previous statement the reason I say that this condition would not pertain to a state of monopoly or collusion is that I think that it would be probable that under those conditions there would be a division of territory, and so you would not have this situation of freight absorption in order to meet a competitor's price outside the territory of the basing-point mill.

Q. Well, you are continuing to use the word "probability" here. I thought at the outset we would have you testify as to those portions of this marketing method set forth in the long hypothetical question which could not have arisen—I misstated myself—to state those portions which could have arisen under collusive conditions.

A. Yes, that is my understanding of the question, but—

Q. Let us talk about that rather than the probability.

A. I have tried to make clear that I do not see how I can because of the various forms which collusion might take.

Q. In other words, when you say that certain things may have resulted from collusive activity you are just talking about probabilities?

A. Well, I do not know when I said that certain things may result from collusive activity. Are you referring to a division of the territory, for instance?

Q. No; I am referring to your testimony that you have just been giving as to what portions of this could 44850 have resulted from collusive activity.

A. Oh, I did not understand you asked me whether these things could have resulted from collusive activity. I thought it was whether they would be consistent with or could exist under a condition of collusion.

Q. No. I think it is very clear, and the record is clear. I have been asking you to state what portions of this system could have resulted from collusive activity.

A. Well, that is a little different from the question that was asked me on direct examination, because—

Q. Yes, perhaps it is.

A. I was asked if many of these conditions were consistent with or could exist under a condition, or set up an inference of a condition, and I am sorry if I have misinterpreted the question.

Q. I do not think you did at the outset.

A. I do not think it makes very much difference, but there might be some of these conditions which could exist or which could not exist under a condition of monopoly, and yet would not themselves be the result of that state of monopoly.

Q. Let us have our minds meet again.

When you were testifying just now about this most prevalent pattern of price being the lowest combination of base price plus freight from the basing point, is it your testimony that that pattern could have arisen out of 44851 collusive activity?

A. I think the language I have been using here has been that it was consistent or inconsistent with a condition of monopoly. I have not been meaning to say that it was the result or not the result of monopoly or collusion. It may be a rather fine point, but since the point has been raised I want to make my position clear on that.

Q. All right.

Do I now understand that your testimony about this most prevalent of patterns means that that most prevalent pattern could have arisen out of collusive activity?

A. What I said was that that most prevalent pattern I thought was very unlikely to be found in connection with a condition of monopoly or collusion.

Q. Can't you answer my question as it is put, Doctor?

A. Now, you ask if in my opinion it could be the result of combination or—

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood. Can't you answer that directly, Doctor, "Yes" or "No"? Your explanation is already in.

The Witness: Well, I would answer it just as I did in the other form, that it is very unlikely, or that it was improbable—

44852 Trial Examiner Norwood: He did not ask you whether it was improbable. Answer the question.

Read the question again.

(Question again read.)

A. Well, I answer that "No," but still referring to my qualification as to the meaning of "collusion."

By Mr. Wooden:

Q. All right. Now, let us go ahead, but keep in mind the main question, which is that you are to point out the portions of this marketing system set forth in this long hypothetical question which could have arisen out of collusive activity.

A. The next paragraph, beginning on line 18 and going over to line 2 on the next page, describes conditions which might exist in connection with a condition of monopoly or collusion, but under certain forms of collusion possibly—probably would not exist.

The next sentence: "Each manufacturer has invested considerable time and money in developing channels of distribution, such as dealers and contractors."

Here, again, I am under difficulty in saying positively "yes" or "no." Under a condition of monopoly or collusion there would very likely be less of this activity of mills in developing their channels of distribution and their approach to dealers than under a condition of competition. But—

Q. Doctor—

44853 A. —I would not say that there could not be any of this.

Q. I want you to keep in mind the question "could not," and not "likely" or "probably."

A. I shall, I am afraid, have to insist on bringing in the matter of probability to make my answer accurate.

Trial Examiner Norwood: Well, if there is any further explanation on the subject, it can be brought out by fur-

ther questions. You do not have to go any further than what is required by the question.

The Witness: The sentence beginning on page 7—

By Mr. Wooden:

Q. Page 7?

A. Yes. "It has been the experience of each"—line 7. I beg your pardon.

Q. Of what page?

A. 44615.

Q. All right.

A. "It has been the experience of each manufacturer that an open reduction in price has, from time to time, provoked further reductions in price by competitors."

That seems to be a description of a condition which would hardly be descriptive of a condition of monopoly or collusion.

Q. In other words, it could not exist together with collusion?

44854 A. It would be unlikely to exist under a condition of collusion.

Q. You do not say it could not?

A. I cannot say that, in view of the many possible degrees of collusion.

Q. All right.

Trial Examiner Norwood: Could it exist under any degree of collusion?

The Witness: Then, I am embarrassed, Your Honor, because I have not before me a definition of "collusion" to which we can refer. If I said that it could not exist under any condition of collusion, and then it turned out that collusion might be interpreted to mean—

Trial Examiner Norwood: Any condition of collusion which you can conceive of.

The Witness: Well, that does not help me much, because I can conceive of somebody saying that an agreement on hours of labor, an agreement on hours when the work started, an agreement of wages, was collusion; and if that is collusion, then the answer is going to be very different, you see.

By Mr. Wooden:

Q. Well, we are not talking about that kind of collusion here, Doctor. We are talking of collusion on prices.

A. That helps me to get out of those two—but I 44855 just cited two examples—but it still leaves me with a host of other examples that I can think of.

Q. We are not asking your opinion as to what is legally collusion, but what, in your opinion as an economist, is collusion.

A. I am not embarrassed at all as to the ambiguity of the legal term. It is the economic term that troubles me by its indefiniteness.

Shall I go on?

Q. Yes. Go ahead.

A. The next sentence says that "such open price reductions have sometimes resulted in price wars." I think that is incompatible with combination or collusion.

Q. Do you mean incompatible in the sense that it could not result under a collusive condition?

A. (Addressing the Trial Examiner.) The same explanation, Your Honor.

Q. You mean it could not?

A. His Honor did not want me to repeat these explanations without limit. If insisted, I can do so.

Trial Examiner Norwood: Well, suppose you make any further answers giving us the definition of collusion which you refer to when you negative as probability.

The Witness: I did not have in mind a precise definition of collusion. I had in mind collusion which
44856 was substantial, would have some important effect upon the conduct of the market of the industry. I definitely did not have in mind such unimportant things in which I am in disagreement with Mr. Wooden, as agreements on wages or hours, or things of that sort, although from certain other points of view those agreements may be very important.

Now, that is as far as I went in my own mind with the definition of "collusion." I recognize that it leaves quite a broad area in between.

Trial Examiner Norwood: Tell us whether you conceived those particular practices which were assumed there and state whether or not you felt they could possibly have been arrived at by agreements between competitors,—collusive action, holding meetings, discussing, passing resolutions, and so forth.

The Witness: Well, in that sense—

Trial Examiner Norwood: Now, can't you point out the one in there which you think could possibly have been established by collusion rather than by gradual growth in the industry?

The Witness: That, Your Honor, is a little different question from that which was put to me, and in some respects is easier to answer.

44857 If I may answer whether price wars could result from collusion of competitors, the answer obviously is "no." But I was trying to be very accurate in answering the question whether price wars could exist in connection with a state of collusion, and that is, I submit, a rather different question, and forces me again to this qualified form of answer. I am quite willing to let my qualifications now on the record stand without further reiteration, if that will be understood by all hands.

By Mr. Wooden:

Q. Well, Doctor, you are saying now that you would have no very precise concept in mind when you use the term "collusion"; is that right?

A. That is right, if you understand it as I have already explained it as considerable length, that the term "collusion" is a broad term and, without specifications, may include the whole list of acts, some of which would be important and vital from the point of view of regulating or governing marketing, others of which would be unimportant. From another point of view those considerations that would be unimportant here might be important. Collusion on rates of wages, for instance, would be an example. And in that sense my definition of "collusion" is indefinite.

Q. Was your concept of collusion any more precise or definite when you testified regarding it on direct examination?

44858 A. Well, there the question took an opposite form. There I was asked whether a certain set of hypothetical questions created in my mind an inference of collusion. I can say definitely "no" to that, don't you see, without specifying all the different grades of collusion.

Q. But didn't you have to have some concept in your mind of what collusion meant when you answered that question on direct?

A. Oh, yes. Oh, yes.

Q. Yes. And did you have any more precise or definite standard in mind then than now when you say you do not have any definite standard?

A. I did not have to have, because, whatever definition

of collusion, those hypotheses did not set up an inference of collusion. Now the question is turned right around, and I am put in the difficult position of taking each of these hypotheses and saying whether it could or could not exist under a condition of collusion.

Q. You admitted some of them could; that is why I am doing it.

A. Yes, some of them could exist under a condition of collusion; some of them cannot. But when I say they cannot I can't escape the uncertain area to which the term "collusion" might be applied.

Q. When you answered on direct that these hypotheses did not give rise to any inference in your mind of collusion, you mean to say you answered that without
44859 having any definite concept in your mind of what collusion was?

A. I did not have to, Mr. Wooden, because any concept of collusion was—well, take it this way: I cited instances of collusion which I think are immaterial here and to which you agreed—we both agreed that an agreement of competitors to set up a uniform standard of wages is not involved here. Now, take that one. I was given a set of hypothetical conditions. I was asked if that set up in my mind an inference of collusion. It did not even set up an inference of collusion to regulate wages. There is nothing there that would lead me to such an inference. You see, that is a negative answer that I am called upon to make, and it is easy enough for me to find in a certain set of hypothetical conditions no inference of any kind of collusion at all, however you define it and whatever the species you may have in mind. This problem I am struggling with now is quite different.

Q. Isn't it an essential part of an economist's business to consider the question of collusion?

A. Oh, yes.

Q. And yet you say you have no definite concept of what it is?

A. I did not say that, Mr. Wooden. I said that collusion covers a great variety of acts, and in any particular connection, if you ask whether a certain condition is compatible with collusion, you have to know what kind
44860 of collusion you have in mind.

Now, an economist under those conditions would, as you correctly suggest, have to know what the precise

definition was if it was important to the point he was making, and it would be his obligation to define the term just as he was using it in that particular connection.

Q. You say that it is possible to give a reasoned and logical negative answer to the question of whether collusion exists—

A. No—

Q. —without a definite and precise concept—

Trial Examiner Norwood: Let him—

Mr. Leisure: Let him finish his question.

The Witness: I beg your pardon.

Trial Examiner Norwood: Read the question up to this time.

(Question read.)

Q. (Continuing.) —of what collusion is?

Mr. Leisure: Just a moment.

If your Honor please, I want to follow your instructions as carefully as I can, and I do not want to make objections unless Your Honor thinks they are important, but it does seem to me that we are now just arguing with the witness: Did you see a panda on Pennsylvania Avenue?

No. Now, what is a panda? I don't know. It is a 44861 type of argument that we can spend hours on.

Trial Examiner Norwood: I think a logical question would be, How is it that you don't know? I mean—

Mr. Leisure: The street was empty. Exactly what the witness is telling us. He couldn't tell us where the panda came from. He couldn't describe it.

Mr. Wooden: I am very grateful for the illustration of the panda.

Trial Examiner Norwood: I think he may answer this question. I do not think it should go too far.

Mr. Wooden: I am very grateful for the panda suggestion.

Trial Examiner Norwood: Objection overruled.

By Mr. Wooden:

Q. You heard it, Mr. Witness. Somebody asked you whether you saw a panda on Pennsylvania Avenue, and you said no. How could you make such an answer without knowing what a panda was?

Mr. Leisure: Now, that brings out the point of my objection. That is exactly what this type of examination is leading to, and one question is just as sensible as the other. The last question which Mr. Wooden has put, which should

not be allowed anywhere, is just as much to the point as the previous question.

Trial Examiner Norwood: I think that is per-
44862 fectly logical.

Mr. Leisure: It is logical, but this has nothing to do with this case. If we were discussing it at another time it would be an interesting discussion.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: That is merely Counsel's remark.

Now, read the previous question and I will ask the witness to answer.

(Question read as follows:

"Q. You say that it is possible to give a reasoned and logical negative answer to the question of whether collusion exists without a definite and precise concept of what collusion is?")

A. I am sorry to be meticulous about the phrasing of the question, but I did not say "collusion does not exist" in any testimony that I have given so far.

By Mr. Wooden:

Q. You did not say anywhere that you now recall that collusion could not exist in this method of marketing here?

A. I said that—in answer to your question this morning, I said that all of this list of hypotheses that we are now going through could not, in my opinion, all exist under
a condition of monopoly or collusion, and at another
44863 place I said that under certain hypothetical conditions laid before me I would not draw an inference that collusion did exist. But I do not think that I stated as a matter of fact whether collusion at any place exists or does not.

Q. I thought we had straightened that out a while ago. The record will have to show on that.

But my question still persists, Doctor, as to how on direct examination you could answer so readily as to whether collusion existed, or probably existed, or improbably existed, without knowing what collusion was, and now when the same question is put to you you say you do not know what collusion means.

Mr. Leisure: We have been over that three times. I object.

Trial Examiner Norwood: You object to it on account of its argumentative nature?

Mr. Leisure: I do, and on the ground that we have been over it several times. It is highly argumentative.

Trial Examiner Norwood: Well, I shall sustain the objection because I think that the situation was not accurately stated. He has testified that these conditions which were assumed here did not furnish to him any inference of collusion. Now, if you want to base a question on cross-examination on that statement of his and ask him how he can state that without having a definite idea of
44864 collusion you may do so.

Mr. Wooden: Well, I will modify it to correspond to Your Honor's suggestion, and for my present purposes that is all I want, to find out why he could so readily answer questions about collusion on direct without knowing what the word meant, and now he does not know what it means.

Mr. Leisure: My objection stands to that question.

Trial Examiner Norwood: Objection sustained.

By Mr. Wooden:

Q. Well, Dr. Fairchild, when you testified that the marketing method outlined in the hypothetical question,—that you would not draw an inference of collusion from it, did you have any more definite concept of the word "collusion" then than you have now?

Mr. Leisure: If Your Honor pleases, that precise question has been asked a number of times. I am sure the record will show it.

Trial Examiner Norwood: Objection overruled. He may bring it out.

The Witness: Shall I answer it?

Trial Examiner Norwood: Answer it; yes, sir.

A. Well, I have already said that in answering a question like that the precise category of the various acts which might be included under collusion is not necessary; whereas, it is necessary in questions in the form which I am now considering.

44865 May I give an illustration? You might ask me if looking about this room I shall draw the inference that there is an automobile in this room, and I would say "No." You might ask me, "Can an automobile go up a 15-percent grade at 40 miles an hour?" I would say, "Before I answer that question I would have to know something about the power and the engine in that automobile.

and a whole lot of other things." I can't say "yes" or "no" to that. In deciding by looking around here that there is no automobile in this room I don't have to have a list of the different makes of automobiles.

By Mr. Wooden:

Q. Don't you have to know what an automobile is?

A. Yes, I have to know what an automobile is.

Trial Examiner Norwood: Suppose he asked you, then, if you could not testify positively that there is not an automobile in this room, would you have to have a different definition to answer?

The Witness: That would put me on as a factual witness. And if I were asked as a matter of observation, looking around this room, whether there was an automobile, I would say no.

Trial Examiner Norwood: Well, the other was factual, as to whether there was or not.

The Witness: Yes.

Trial Examiner Norwood: And he wants to find 44866 out whether you need a different definition to negative a proposition.

The Witness: I think you do, Your Honor. I think that one can easily say.

If I can stick to my factual illustration, I do not have to know about the different qualities and brands and types of automobiles to say that there is not one in this room. I know what an automobile is.

Trial Examiner Norwood: Would you have to know anything different to answer a question as to whether there could possibly be an automobile in the room?

The Witness: Whether there could?

Trial Examiner Norwood: Yes.

The Witness: No. That would be the same.

Mr. Bond: Might I suggest, Your Honor—

Trial Examiner Norwood: Certainly.

Mr. Bond: The second question is this: What is included in the term "automobile"?

Trial Examiner Norwood: Is there anything different included in it than was in the first question?

Mr. Wooden: That is what I am talking about.

Mr. Bond: May I give another illustration, Your Honor?

Trial Examiner Norwood: Yes.

Mr. Bond: If you were to ask me, "Have you any
44867 money in your pocket?" I should say, "No."
"Well, what is money?" "I don't know." I know my pocket is empty, but I can't say whether you include notes, or promissory notes, or paper money, or coins, or foreign coins, or what is included in that phrase "money." But I know the pocket is empty.

Mr. Wooden: The pocket is not empty in this case. The cement industry is a physical fact.

Trial Examiner Norwood: Go ahead. Proceed.

Mr. Wooden: What is the state of the record?

(Record read.)

Trial Examiner Norwood: Now, this test was for the witness. The Counsel gave an apt explanation and hit it on the head. But the idea was to get the witness' explanation, if he had any. Now, those are the things that I am trying to prevent here, in the interest of fairness to both sides.

Mr. Bond: This is off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Proceed.

The Witness: I was perhaps through with the illustration there. The point I was making was, to affirm that there is not an automobile in this room does not require
of me knowledge as to all the qualities and different
44868 brands and makes of automobiles. Another kind of question might require some such knowledge. I do not think that is altogether a very helpful illustration perhaps, but it meets that particular point.

Q. Go ahead, Doctor, with your description of the portions of the long hypothetical question which could have arisen out of or been maintained by collusive activity. Keep the word "could" in mind.

A. The sentence beginning with line 22—

Mr. MacIntyre: What page?

A. —page 44615, is, again, one which I think would not probably pertain to a condition of monopoly or collusion.

"Any manufacturer, no matter how small, can initiate an effective decrease in price."

By Mr. Wooden:

Q. You say that could not be under any condition of collusion?

A. I think it would not probably occur under monopoly or collusion, as I understand it.

Q. Well, let us keep to the words "could not," not probabilities.

A. Well, I am back in the same difficulty, that "collusion" might conceivably be given such a broad definition at the risk of repetition, again—might be given such
a broad definition that it would be called collusion if
44869 manufacturers had gotten together and agreed on
some minor matter.

Trial Examiner Norwood: I thought our minds met on what collusion meant with respect to the answer to that question.

Mr. Porter: Your Honor, I wonder if I may make a suggestion. The witness has testified as an economist, and economists have to testify;—they have to form their judgment on what they think no business man would do under a given condition. It seems to me that our difficulty here is the meaning of the word "could." Of course, two men can agree that one of them will murder the other, but that is not an economic conclusion.

Trial Examiner Norwood: I do not think we should discuss this any further. Let the witness make his answers. A short while ago the witness and you and I seemed to agree as to what would be a practical definition of "collusion" in answering this question, and he answered part of the question from that angle. Now, I hope you can go back and answer this question on the simplified understanding of what a very simple word means, "collusion."

The Witness: Well, Your Honor asked me, in connection with the question of price wars—

Trial Examiner Norwood: Yes.

The Witness: —whether competitors could get
44870 together and form an agreement to do such and
such things. That made it very easy to say that they would not get together and form an agreement to engage in a price war. Even that, I suppose, I have to admit the theoretical possibility that they might stage war by agreement, but that again illustrates the difficulty here.

Now, in this sense it is not so easy. I have not been asked whether manufacturers might get together and agree to do this particular thing, but whether this particu-

lar condition laid down here could exist under a condition of monopoly or collusion. And I am frank to say that I can conceive of a possible definition of "collusion" so narrowly restricted that this condition might apply: But under conditions of collusion as I would expect to find them, and as I think the term would ordinarily be interpreted, it seems to me very unlikely that the individual manufacturers would be left free to initiate price decreases. That is as plain as I think I can make that.

By Mr. Wooden:

Q. Again you are dealing in probabilities, Doctor. I want you to keep to the line, whether it could or could not be.

Trial Examiner Norwood: Could it be brought about by simple agreements and understandings between competitors?

The Witness: Well, those agreements and understandings might or might not control the matter of leav-
44871 ing a manufacturer free to initiate a decrease in price. That, perhaps, is the answer.

By Mr. Wooden:

Q. All right. Go ahead.

A. As to the rest of the paragraph, beginning on line 11 of this same page, all the paragraphs except the last sentence, we have descriptions of marketing practices, which I think would be much less likely under monopoly or collusion than under competition.

Q. Do you say that they could not have been the result of collusive activity?

A. Yes, sir. I don't think they would be the result of collusive activity. I think they might be—they might exist along with a condition of collusion, if the term is so narrowly defined as to leave these things probable. But here you are dealing with efforts—with actions taken by sellers to gain the good will of their buyers, to make their—make themselves agreeable to their buyers, to encourage buyer favor. Now, those are the things which a monopoly does not feel under very much compulsion to do. A combination or agreement reduces the importance of those actions.

Q. You think competitors acting in collusion disregard the matter of creating favors with buyers?

A. I don't think they disregard it entirely, but I think

that they are less concerned with that than are com-
44872 petitors who are actually in competition with each other.

Q. In other words, this paragraph we are now talking about could have been accompanied by collusive activity, couldn't it?

A. I would not want to say that a combination or collusion could not possibly undertake some or all of these actions, but I repeat that they are less likely under a condition of combination or collusion than under a state of monopoly.

Q. All right. Go ahead.

A. The next paragraph, beginning line 24 of page 44615, and going through line 6 on the next page, is of the same character as those hypotheses which I have just described. They represent acts which are natural under a condition of competition, and less likely to be found under monopoly and collusion or combination.

Q. Will you agree that they could exist under a condition of collusion?

A. Yes, I think collusion could, if it chose, institute those trade practices.

Q. All right. Go ahead.

A. Well, I think the rest of that paragraph goes with the first part. It is a conclusion based upon the preceding conditions.

All of the next paragraph apparently relates to secret price cuts. Now, I think secret price cuts might be
44873 found under a condition of monopoly or collusion. But I want to be very careful that I am not quoted as saying they result from a condition of combination or collusion. It is hard for me to conceive of competitors getting together and forming an agreement to engage in secret price cuts. But interpreting this question as I have been doing all along, that is, whether these conditions could possibly exist under a condition of monopoly; I think secret price cuts could exist.

Q. As a matter of fact, Doctor, wouldn't the secrecy with which they were made have some bearing in your mind upon the question of whether that fact of secrecy indicated any collusive condition?

A. As the industry has been described to me in the hypothetical statements, I should think there is just about the same reason for making these cuts secretly under com-

petitive conditions as under monopoly. In either case I should think the secret—the price cutter would try to keep his actions secret.

Q. In any event, the secrecy is equally consistent with a collusive condition as with a competitive condition?

A. Well, there Mr. Wooden has brought in another word, which has not been in any of these other questions, "equally," and I am now asked to compare the probability,—or whether these conditions could just as well be the result of collusion as competition.

Q. I will withdraw the—

44874 A. I do not want to do that.

Q. I will withdraw the word "equally."

Is the existence of secret price cuts compatible with a collusive condition?

A. I think it is, yes.

Q. All right. Go ahead with your next description of what portions of this method outlined in the long hypothetical question could have resulted from or been maintained by collusive activity.

A. Well, the next paragraph, excepting the last sentence, which begins on line 9 of page 44617, goes on with this matter of secret price cuts. And I think if secret price cutting were taking place under a condition of monopoly or collusion, that the consequences here stated might follow.

Q. Do you mean—

A. The use of the term "competitors," of course, assumes that it is not monopoly. So that my answer would have to be qualified to the extent of saying some of this could not happen under a condition of monopoly, because there could not be competitors. But that is right in the hypotheses. But collusion might be between competitors who were still competitors, although they entered into some degree of collusive agreement.

Q. That paragraph, then, is compatible with a collusive condition?

A. I said all except the last sentence, which be-

44875 gins on line 9. That sentence reads: "Manufacturers have been shown from past experience that extensive secret price concessions in many markets may result in open price wars." Now, I think that is not compatible with a condition of monopoly or collusion—"open price wars."

Q. You mean as of the time the war is carried on.

A. Yes.

You could change the conditions there by saying that in the past there has been a condition of competition under which there has been price—secret price concessions, which in many markets—now, wait a minute. No. The wording of this sentence is apparently as of the time, because it does not refer to an historical fact, but says that "manfacturers have been shown from past experience that extensive secret price concessions in many markets may result in open price wars." Now, the wording of that sentence does not specifically say that there have been open price wars in the past. It says that—

Q. The next sentence does.

A. Well, suppose I continue my answer, Mr. Wooden, on this particular sentence.

This says that at the present time manufacturers looking back on their past experience have the idea that extensive secret price cuttings may result in open price wars. Now, I suppose you could consider a situation in which there has been competition in the past, perhaps, and

44876 now in a state of collusion or monopoly they may, looking back over that past experience, decide that secret price concessions may result in open price wars. I say that is not compatible, because "may result" seems to imply some future consequence, and under a condition of monopoly or collusion I would think open price wars are just about ruled out.

44877 "Q. Could price wars have existed under a condition of collusion?"

A. I do not think they could,—again referring to my qualification as to the interpretation of the word "collusion."

44878 Q. Well, isn't it entirely reasonable to conceive that some competitors may jointly make war on some other competitors, just like nations do?

A. That may be, but I am answering a hypothetical question here, and perhaps I was not justified in doing so, but I assumed all the time that when we used the word "monopoly" we meant that that included all the competitors in this industry, all the mills in the industry; when we talked about collusion we meant all the mills in this industry have entered into collusion. Now, if you want to put up the hypothesis that some of the mills might have

entered into some collusive combination and others entered into another collusive combination, I would have to go back and do this all over again, because, of course, those two combinations could fight each other.

44879 Q. Dr. Fairchild, will you proceed with your description of the portions of this long hypothetical question which in your opinion could have arisen or been maintained as the result of collusive activity.

A. Could I have a copy of that question?

Q. Oh, yes. I think you were on page 44617 (handing transcript to the witness).

A. Beginning on line 12, on page 44617, the first two sentences could not, I think, have resulted out of a condition of collusion. They refer to price wars and reduction of prices as a result of price wars.

Q. In that connection, do you say that no two or more powerful interests in the industry could have made war upon competitors,—any competitors,—who had been, you might say, conducting a guerilla warfare in the form of secret price cuts?

A. Well, I have in mind that if certain mills or groups of mills were in competition with other mills, that
44880 was a state of competition. As I said before the luncheon, that I have been considering collusion as meaning a collusive agreement among all the competitors concerned.

Q. Well, can't you conceive as an economist of a situation where there are alliances between competitors in a price war?

A. I cannot think of the price war being the result of that alliance.

Q. No, but may there not be an alliance formed to carry on a price war?

A. Against some manufacturers?

Q. Yes.

A. I would call that competition.

Q. You mean such an alliance would be competition?

A. Well, I should say that in that industry there would be a state of competition, if there were certain groups competing against other groups.

Q. Even though the ones who initiated or who at least declared and carried on the price war might be aligning themselves with others of like interest?

A. Yes, for all I know.

44881 A. For all I know at any given time one of these competitors may be historically the result of some combination in the past, so far as I can tell from any hypothetical statements that have been before me, but if he is competing with the other producers I should say there is competition.

By Mr. Wooden:

Q. Is that competition what you would call the cut-throat variety?

A. Not necessarily, so far as the hypotheses here go, I would not be able to describe the kind of competition.

Q. You do not understand by "price war," then "cut-throat competition"?

A. I do not think the terms are synonymous. As a matter of fact, I do not think either term has a precise
44882 technical definition in economics. I certainly would not think of that as being exactly synonymous.

Q. What is your concept of a price war?

A. A price war is a very vigorous struggle between competitors in which prices are being slashed, each one with the object of gaining over its rivals.

Q. All right.

Go ahead with your description of the respects in which any of these statements in the long hypothetical question could have been accompanied by collusive activities?

A. Accompanied by?

Q. Accompanied by or arisen out of, take either one or both.

A. Yes.

Well, the rest of that paragraph, going through line 22 could have accompanied collusion.

Q. In other words, the unchanged price for three or four years could accompany collusion?

A. Yes, that could accompany the collusion.

Q. All right. Go ahead.

A. Well, I think all the rest of the next paragraph could exist under condition of collusion.

Trial Examiner Norwood: Could a price persist exactly the same for three or four years by agreement in the absence of any other conditions which were conducive to price stabilization?

44883 The Witness: Well, I have been asked to state whether these things could exist, and I think that could exist whether or not other conditions might be such

that it would not be very probable even under conditions of monopoly. I, of course, am not able to say, but I conceive it is possible that a combination might succeed in maintaining price for a considerable time.

By Mr. Wooden:

Q. I understand the last paragraph of the long hypothetical question you agree could have come about and exist as compatible with collusive activity?

A. I think so, down through line 6 on page 44168.

Q. Well, now, to sum up, as I understand your description which has been contained in quite a long series of your answers—you correct me if I am wrong—my impression is that you have conceded that all or practically all of these things in the hypothetical question do not preclude the existence of collusion among competitors except the one that describes the most prevalent pattern of price; is that correct?

A. No, no. I think there were various points here which I thought that the condition was such as I would think would not exist under collusion or be caused by collusion, as I would suppose collusion to manifest itself.

Q. Well, is it your testimony that in your opinion this description of the most prevalent price pattern pre-
44884 cludes the existence of collusion among competitors to establish or to maintain that pattern?

A. So far as it includes freight absorption, I think it does.

Q. Well, I am referring to this language which says that the most prevalent of these patterns is the lowest combination of some price base plus actual freight from the basing point. Is it your testimony that that sentence precludes in your opinion the existence of collusion to establish or maintain that pattern?

A. Well, I think my answer to the question you asked this morning is on the record.

44885 Trial Examiner Norwood: Well, I will ask you to answer just as directly as you can.

A. I can't remember exactly how the question was asked; or, of course, the exact words of my answer.

By Mr. Wooden:

Q. Well, I have got a new question now. Answer it.

A. But my recollection is that I answered that with respect to that being part of a description here of the prevailing method including freight absorption.

Trial Examiner Norwood: Well, read the question.

(Question read.)

Trial Examiner Norwood: Now, can't you answer that directly, Doctor?

A. That sentence alone, without any reference to freight absorption, implying simply that different mills are bases for different territories might come about under conditions of collusion, and there might be collusive division of territory in which the prices would be so determined.

By Mr. Wooden:

Q. But when freight absorption is added to the concept there then is it your testimony that it could not have come about by collusion to establish or to maintain that pattern?

A. Yes, it is.

Q. What is the nature and extent, Doctor, of your factual knowledge about basing-point systems?

44886 A. I have for many years been a student of the general field of economics with special reference to questions of market, price, value, competition. That study has required me to make myself acquainted with the historical facts relating to those subjects as well as the economic principles. The basing-point method of marketing goods I regard as not a peculiar and very special part of the field of economics, but as inherent in a very large part of the ordinary marketing practices by which a great variety of goods are sold, and, therefore, I regard the fact of the general economics, historical facts relating to these subjects as pertinent to the basing-point method. Now, more specifically, I have read a considerable number of books and articles dealing especially with the basing-point method.

By Mr. Wooden:

Q. Will you specify?

A. I am sorry that I cannot remember all of the titles of these books or articles, but going back to the time when this basing-point question came up in connection with the steel industry, I recall one of two books or reports, and a number of articles in the journals, articles by men

44887 such as Professor Fetter, Professor Commons, Professor Viner. I read a little later a book on the basing-point system in the cement industry, by Willis and Byers, and read a very critical article reviewing that book by Professor Fetter, and I have read in connection specifi-

cally with basing-point methods in the cement industry, other articles by Fetter, one reviewing a book by deChaveau and other writers, and deChaveau's rejoinder. I have read two reports by the Federal Trade Commission, one dealing with pricing methods in general, I believe, and one dealing with the basing-point method in the cement industry. I am not clear in my recollection of the precise title of those reports. I have no doubt that conveys to your mind the two reports I am referring to.

Q. I take it you have read all those things contemporaneously at the time of their coming out?

A. Most of them, yes. I think I could say all of them. The two reports by the Federal Trade Commission I read twice, once virtually contemporaneously. I cannot recall the exact date of their publication, or the exact date of my first reading, but then I read them again later within the last couple of years. The others, most of them I read as they came out.

I have, within the last couple of years, gone back and read some articles which I had read before, and I have no doubt that some out of that whole list of articles I read I read for the first time even though they had been published earlier, I have gone back over this very extensive list of the writings of the economists to which I have already referred, hunting through those books for references to basing-point methods, or to the general questions of price, value, marketing, which have a bearing on basing points, and in that connection have particularly referred to books by Fetter and Commons and Viner, and a number of other economists. I have not read fully but have examined Fetter's book, "The Masquerade of Monopoly," checking it with reference to particular points, while not reading the whole book. I am—

Q. As a matter of fact— Pardon me.

A. I am sure that I have not from my memory extemporaneously thus given you the full account of my studies.

Q. As a matter of fact, Doctor, isn't the literature dealing specifically with the basing-point method rather meagre?

A. Well, that implies comparison with something, doesn't it?

Q. Yes.

A. There is quite a list that I have named there, and there may possibly be some that I have not read, but there is quite a literature on that subject.

Q. It is something of rather recent development, isn't it, as the science of economics goes?

A. Well, there I come back to the point I made first in answering your question that pretty much all the general textbooks on economics present historical facts and
44889 economic principles which are the very principles that control in the field of the basing method, and in that sense it is an old, old subject, and is dealt with by pretty much every author who has written a general textbook in economics. Now, if you were referring to a literature that dealt specifically—

Q. I am.

A. —and especially with basing point, as such, that literature has to considerable extent, I think, dated from the time that prominence was given to this matter in connection with the steel industry.

Q. Pittsburgh Plus case?

A. Pittsburgh Plus, yes.

Q. And can you recall any literature on the subject in the economic field relating specifically to the basing-point method prior to the Pittsburgh Plus case?

A. There again I would have to say that many of the writings which may not have definitely and specifically mentioned basing-point as a subject have dealt with the principles that deal with this matter.

Q. But I am asking you as to writings that dealt specifically with the basing-point method.

A. Not as part of a general discussion of pricing and value and marketing.

Q. I said specifically to the basing-point method. Now, I am not asking for things that you say had application to it by inference. I am asking you what the writ-
44890 ings were prior to the Pittsburgh Plus case relating specifically to the basing-point method.

A. Well, I once more say that I think many of the writings do relate specifically to that subject even though they may not have mentioned it by name.

Q. In other words—

A. Those have been books with a title, basing-point method, or something of that sort; I do not now recall.

Q. Do you recall anything prior to the Pittsburgh Plus case where any economic text writer either in a book or in an article discussed the basing-point method as a method of merchandising?

A. I could not give you the name offhand now.

Q. Do you think there were any?

A. I think there may have been such articles.

Q. May have been. Now, are you just speculating on that, or is that—can't you tell us?

Trial Examiner Norwood: Is that your impressions?

The Witness: Well, I can't say that there has not been, and I cannot name the specific articles that have been.

By Mr. Wooden:

Q. Well, isn't it your impression, Doctor, that prior to the Pittsburgh Plus case there were no writings by economists that dealt specifically with the basing-point
44891 method?

A. I am not able to say that definitely, that I would—could express the opinion that there had not been such books. I have said that I cannot name such books from memory.

Q. Would you be inclined to disagree with the opinion that there were no such writings prior to that time?

Mr. Bond: Does Your Honor think this is fruitful?

Trial Examiner Norwood: I think he has answered it, unless there is some special reason for finding that out.

Mr. Wooden: Well, I will proceed in another way.

By Mr. Wooden:

Q. In referring to the Pittsburgh Plus case did you read any of the record made in the trial of that case?

A. No, I did not except as it may have been quoted in reports and in articles which I read. I did not read from the record itself.

Q. Did you ever read the findings of fact made by the Commission in that case?

A. I think I did, although that is so far back that I cannot be certain about that.

Q. Is there any industry using the basing-point system that you have made first hand inquiry into the methods employed there?

A. Well, I think that the basing-point method, meaning that goods are sold at a market at a certain delivered price, and that the producers have to bear the
44892 freight cost to that price (place) is very common, indeed, and it is to be found in a very large number of industries, and I have, of course, made studies of the economic principles relating to a great group of industries.

Q. Won't you make an effort to answer my question as I put it, Doctor?

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Leisure: May we have the answer read?

Trial Examiner Norwood: Read the answer.

(Answer read.)

The Witness: Off the record, could I correct one word there, "price" should be "place."

Trial Examiner Norwood: Now, can you give—

The Witness: I have not made technical investigations as an expert in industries. I have— I think that stands as the answer to that.

By Mr. Wooden:

Q. What you have done, then, Doctor, is to merely keep reasonably abreast with what other people were writing about the subject; isn't that it?

A. Yes, sir; including decisions of courts and governmental tribunals, and including also my investigations of the fact of marketing and price in industry in general.

44893 Q. In that general connection, did you familiarize yourself with the use of the basing-point system in the sugar industry?

A. No, not in any specific way.

Q. Did you read any of the record of testimony or any of the briefs in the Government's case against the Sugar Institute?

A. Not the record or the briefs. I have read about that case.

Q. Did you ever read the opinion of the courts in that case?

A. I probably have, or extracts from them, but can't now be certain as to that.

Q. Well, when you testified here concerning the competitive status of basing-point systems, you were basing your testimony, were you not, in part upon merely general information accumulated from the writings of other people?

A. Well, you will recall, of course, that my testimony has all been in answer to hypothetical questions and in the answers to those questions I feel very confident that the knowledge of the principles of economics and the history of that part of the field of economics which relates to sell-

ing practices, marketing and price are quite sufficient to enable me to answer those questions based on certain hypotheses laid before me.

Q. And would you say that the accumulated information from reading whatever people had written about the basing-point system or method of pricing did not
44894 aid you in answering the hypothetical questions?

A. Oh, I certainly would not want to say that my knowledge of the subject from my reading and study had given me no aid, but the point I wish to make is that those questions were such as I was able to answer on the basis of fundamental principles and facts of economics which I had obtained through my own study and research and not primarily from the reading of writings of others.

Q. Did you recognize in those questions as put to you familiar things corresponding to what you had already learned in reading about basing-point systems?

A. I was able to recognize that those hypothetical questions were not wholly removed from fact because I naturally have obtained some considerable factual knowledge about basing-point systems from my studies and my reading of other writers, but I should add that my answers were based to the very best of my ability upon the hypotheses placed before me.

Q. And disregarding anything any every thing that you had already learned about basing-point systems from your readings?

A. Well, in the questions that were put to me I did not find it necessary to either regard or disregard factual matter which I knew.

Q. But you recognized some of it as familiar from what you had already learned in other ways?

A. Oh, I know enough about basing-point system to recognize that some of those hypotheses were not
44895 out of harmony with the facts as they are.

Q. As they are presented by some writers that you have read?

A. Yes.

Q. When did you first learn, Doctor, that you were to be a witness in this case?

A. I cannot tell you precisely that because as I was—when I was retained I think all that was said to me was that I might be called as a witness. I confess my memory is a bit vague on this.

Q. Well, when were you retained with that understanding?

A. I am not sure also of that date.

Q. Approximately?

A. Well, I should say approximately a year, a year and a half ago, something like that.

Q. How much time have you given to the preparation for your testimony since that time?

A. Well, I can answer that only approximately. I have given considerable time to the study of this case, perhaps it might be in the neighborhood of the equivalent of thirty or forty days. You will understand, of course, that I am making only a very, very—

Q. Yes, I understand.

A. —approximately of this, but in answer to your specific question, I do not know. I cannot tell even approximately how much of that was before I was retained
44896 and how much after, because even before I was retained I was giving—I had been asked to give some advice and consultation with attorneys, but—

Q. How long before you were retained were you asked to give some advice on it?

A. Well, the first occasion of that, I believe, was early in the year 1938. There again I am not sure of the exact date.

Q. Did you attend any conferences or discussions with other economists in connection with your preparation?

A. Yes, there was one; I recall one conference, and there had been one or two other conferences, in which perhaps one other economist was present, or two.

Q. Who were present at the one you remember about, and when did it occur?

A. That was, I think, about the time when I was first asked to assist on this case, somewhere early in 1938, I believe. It was a large conference, and a great many men were in the room. I have not canvassed my recollection since then; I am sure I cannot recall more than a very partial list of those who were there. I recall that Professor Vaile was there, Professor Griffin was there, de Chazeau was there, J. M. Clark was there. There were others than economists—

Q. Well, just the economists.

A. Just the economists, let's see.

44897 Q. Professor Burns, Arthur R. Burns, was he there?

A. I do not remember. I do not know him personally, and I cannot recall now whether he was there or not. Oh, David Friday,—I am not sure—I attended another conference about as big as this on another matter in New York about that time, and I know David Friday was at one of those conferences, maybe both of them. He may very likely have been at this one, but I cannot be sure.

Q. There were some other economists than the ones you have named?

A. Yes, there were others.

Q. How many others?

A. I could not give you even a guess at that. There was a big table, bigger room than this room. The room was pretty well filled with attorneys and industry men, and economists, and they were all mixed up, and I could not tell you how many were in one group or how many in the other, or how many were in the room altogether.

Q. And as I understand it, this 30 or 40-day time that you have expended in preparation for your testimony, some of it may have been between the time of this conference and your actual retention, and some of it afterwards; is that right?

A. Yes, some of it may possibly have been before that conference. I would not be certain of that, but not much of it, probably.

14198 Q. I take it that the economic questions involved in this proceeding were discussed at such conference?

A. Yes.

Q. The differences in points of view, if there were any, were expressed, I suppose?

A. Yes, so far as there were differences, they were expressed. I might add that the differences were very surprisingly few. My recollection is that there was very close agreement on general principles on the part of the economists there, but I think each one expressed his opinions freely, and whether he agreed or disagreed to those.

Q. Now, in your preparation for testimony here or at any time after your retention to give testimony, did you read any portions of the record in this proceeding?

A. Yes, sir. I read some portions.

Q. What portions?

A. Well, I read, I think, all of the direct testimony and cross-examination of the Commission's economic experts.

At least I read the testimony of Fetter and Viner. I am not sure whether the Commission had other economic experts, or, if so, whether I—I do not think I read all of their testimony.

Q. There were two others, do you remember reading Dr. Duddy's and Dr. Hibbard's testimony?

A. I read some of Dr. Hibbard's, and I presume I read some of Dr. Duddy's, although I had forgotten his name. I read some of the industry testimony.

44899 Q. What do you mean by that?

A. Testimony by—well, officers of the corporations or technical witnesses put on to testify regarding the facts of the industry; I believe that is how you would describe them.

Q. Put on after the Commission had closed its case?

A. I could not—I could not say as to that.

Q. Can you name any of those whose testimony you read?

A. Was there a Mr. Coogan?

Q. Yes.

A. Well, I read part of his testimony. I am not at all sure that I read all of it.

Q. Did you read the cross-examination?

A. I think I did.

Q. What else—whose else?

A. Well, I think there was one other witness of somewhat the same character, as Mr.—that is, as giving the same kind of testimony as Mr. Coogan, but I do not recall his name. There may have been a couple others.

Q. Was one of them Mr. John Bowen, of the Lehigh Company?

A. That name does not register, I am afraid.

Q. Can you name any others?

A. I am afraid I cannot.

Q. Did you read the testimony of Mr. Magee, of the Alpha Company?

44900 A. I cannot be sure about that.

Q. Technical engineer?

A. I cannot be sure about that. You see, I read Mr. Coogan's, I think, pretty fully, and I skimmed through testimony of some of the other industry testimony, and I do not carry a clear recollection as between the different witnesses on that kind of testimony.

I have not completed my statement yet of all the record I have read.

Q. Well, let us finish this before you go to any other. I understand you to say that in the testimony that you did read, you read the complete testimony, including cross-examination.

A. I cannot be sure about that. I rather think that—no, I will have to leave that uncertain. I read a large extract of Mr. Coogan's testimony, including, I think, some of the cross, but I cannot say whether it was all.

Q. What do you mean by an extract of his testimony? Did you read the original record?

A. Yes.

Q. The questions verbatim—questions and answers?

A. Oh, yes; I read the mimeographed record of the case, of the hearing.

Q. How did you determine which witness' testimony you would read and which you would not?

A. Well, I had considerable batches of the record sent to me and I read what parts of that I thought
44901 would be most helpful to me.

Q. Sent to you by whom?

A. By the attorneys.

44902 The Witness: I am a pretty busy man, and when I got this great mass of record I would start reading where I thought there was something profitable and skim rapidly, and if I found the thing was not giving me any particular useful information I would skip over and go on over to something else. That is the way we economists sometimes do our reading.

In answer to your question now, Your Honor, no doubt this record was sent to me with suggestions to read the testimony of certain witnesses. I recall certain suggestions to that effect, and I am not sure that I followed those suggestions completely.

By Mr. Wooden:

Q. Whose suggestions were those?

A. From the attorneys.

Q. Did you read any of the exhibits in the pending proceeding?

A. I do not think I have seen any of the exhibits.

Q. Were any of the exhibits called to your attention?

A. I think not.

Q. Are you willing, Doctor, to express the opinion here that the method of marketing employed in the cement industry is competitive and not collusive in character?

Mr. Bond: I object.

44903 Mr. Wooden: Wait, just a minute.

Trial Examiner Norwood: Let him finish.

Mr. Bond: Excuse me. I apologize.

By Mr. Wooden:

Q. Without knowing any more about the facts than you have testified about knowing?

44904 A. Well, regardless of degree of my knowledge of the facts, I have not come here as a factual witness, and I should prefer not to be asked to give testimony as to factual matters, as this question seems to imply. I would be glad to answer a hypothetical question of that sort.

Trial Examiner Norwood: You disclaim having given any factual testimony to that effect, do you?

The Witness: Yes, Your Honor.

By Mr. Wooden:

Q. Have you or have you not expressed the opinion here that the method of marketing employed in the cement industry as is described in the hypothetical question put to you by Mr. Bond is competitive and non-collusive in character?

A. Not precisely in those terms. I testified that the marketing methods of the industry as described in that hypothetical question was a method which in my opinion could arise under competitive conditions, and was a method which would to my mind not raise a collusion or combination—an inference of monopoly or collusion or combination.

Q. You say your testimony is that it could not raise an inference of collusion or combination?

44905 A. My answer to that question is that I testified that the hypotheses presented to me did not raise in my mind an inference of collusion.

Trial Examiner Norwood: You were going entirely on those assumptions, were you?

The Witness: Yes, Your Honor, I did.

By Mr. Wooden:

Q. You were not testifying here, then, in the belief that the method of marketing here in question is competitive and non-collusive in character?

Mr. Bond: I object. Pardon me.

Q. But merely that given the assumptions stated in the hypothetical questions you would say so; is that correct?

44906 A. Well, I would say that I do not think my answer has much of any bearing upon my beliefs, if I know what that word signifies. I have already told exactly what I answered and what I meant by that.

Q. Well, aren't you testifying here, Doctor, that the basing-point system in cement is in the public interest because you believe it to be competitive and non-collusive in character?

A. No, Mr. Wooden. My answers to all questions about public interest were in turn based upon these hypotheses and were not factual testimony.

Q. And if you were to assume that the system was not competitive or collusive in character, your testimony would be quite different, wouldn't it?

44907 A. I think I answered exactly that question this morning.

Mr. Bond: It is the same question.

A. I will repeat it if it is desired.

Trial Examiner Norwood: What was the answer?

The Witness: The answer was that, if I may include the question in the answer, that if I were asked to assume a certain industry is collusive and not competitive, I would assume that it was contrary to the public interest. My answer to that is that there may be for all I know from industries which are inevitably monopolistic in nature, and if that happened to be the industry in question I would not be prepared to say that it was contrary to the public interest.

I may go on and say that as between monopoly and competition I think the latter is more in the public interest.

By Mr. Wooden:

Q. And again you are using "monopoly" as inclusive of "Collusive arrangements"?

A. Not quite inclusive, but I am perfectly willing to make my answer so inclusive as to cover both monopoly and collusion.

Q. Now, you testified on page 44626 in response to a hypothetical question, No. 3, I believe it was that the conditions there stated could be the logical result of normal development in the industry. Did you mean by "normal

development" a development through normal competitive forces and not through collusion?

44908 A. I wonder if I could see that record.

(Mr. Bond hands transcript to the witness.)

A. Well, this particular answer refers to a normal development in general. It does not seem to specify as between competition and collusion.

Q. That is why I am asking what you meant by "normal development."

A. I meant one which does not present any peculiar or strange features which would seem difficult to understand under ordinary historical conditions.

Q. Competitive conditions?

A. That question, I think was not asked me. The question was "whether in your opinion the marketing practices as thus described could logically be the result of an economic development in such industry."

Q. And your answer talked about "normal."

A. And when I said "normal" I doubtless had in mind that was economic development; that may have been my memory failing to carry the exact wording of the question.

Q. And when you said "normal"?

A. I certainly did not mean to draw any distinction between economic development in the question and normal development in my answer.

Q. And when you said "normal," did you mean competitive as distinguished from collusive?

44909 A. I do not think I had to raise that question in answering this particular question. If it were raised I should say that this situation described in the hypothetical question could very well be the logical result of a competitive development.

Q. And that is what you meant there?

A. As I say, that word was not in the question.

Mr. Bond: He said that was not in the question.

The Witness: I have already told you that as those words were put to me in the question I did not think offhand as though I had to raise the question about competition. But now that you raise the question I am perfectly willing to say that if the question had been put to me then, then I would have said that all these conditions could have arisen under competitive conditions.

44910 Q. Doctor Fairchild, when you heard the hypothetical questions put to you by Mr. Bond, you rec-

ognized in them, did you not, certain things which you had read in the testimony of Mr. Coogan and others?

A. No. My recollection of that other testimony is not clear enough so that I can say that I would have recognized that.

Q. You recognized things that you had read in general economic writings but not what you had read in the testimony in this case?

A. Well, I recognized certain of those hypotheses which, as I think I said before, were not out of harmony with the facts as I knew them. Now, my knowledge of those facts came from a great variety of sources, and all I meant to say was I could not distinguish the particular refefence to the statements of particular witnesses in the record. I would not want to say that there was nothing in the evidence of those witnesses which might not have added to my knowledge of the facts, but I can't remember more specific than that.

Q. Now, taking up, Doctor, your definition of perfect competition, which you gave on page 44628. In the course of that definition you stated that in a market cha-
44911 racterized by perfect competition "there is no object in his trying to get"—that is, the seller—"his trying to get a higher price because competitors will sell at the going price and he would sell nothing at the higher price, and he, of course, has no object in offering to sell at a lower price, because he can sell at the going price."

Q. Now, isn't it true, Doctor, that under those conditions a seller would not ordinarily accept different prices from his different customers at the same time under equal circumstances?

A. Under perfect competition there would be just one price in the market, and, of course, each seller would get that price from all buyers to whom he sold as long as that price remained.

Q. And he would not be accepting different prices from his different customers under those conditions?

A. No, because there is just one price at that time in the market. It all relates to one moment of time, of course.

Q. What would it indicate to you, as an economist, if a seller were accepting different prices from his
44912 different customers at the same time?

A. Well, it would right away indicate that this was not a condition of perfect competition.

Q. Anything more than that?

A. Well, that is as far as you could go so far as this particular matter goes. That is, it just throws it out as a case of perfect competition.

Q. Would it be a case of pure competition?

A. It might be. You see, pure competition admits of the presence of a very small number of sales which are not at this market price. Perfect competition is so extreme that you can't conceive of any sale off the one price. Pure competition is a term which permits us to classify within that category conditions which are not so extreme as perfect competition, and there you might have an occasional sale at a higher or lower price. That would be because some buyer or seller did not have the complete knowledge which is assumed in perfect competition, or the complete energy to meet his own interests, or it might be at a time when the price was changing. In actual practical markets any change takes an appreciable amount of time. In perfect competition we assume an instantaneous change.

Q. Well, even under pure competition, as you use the term, you would not expect a seller to be regularly accepting different prices from his different customers at
44913 the same time, would you?

A. Not unless he was a very exceptional fellow; he was careless and negligent. That is what pure competition permits. It permits the presence of some of those exceptional ones. But in the general run you would not expect that.

Q. An economist would not expect that?

A. No.

Q. What would it indicate to you as an economist if a seller not merely carelessly accepted different prices from his different customers at the same time but regularly and intentionally did so?

A. You mean in this one market and for one homogeneous article?

Q. Yes.

A. It might indicate that we did not even have a state of pure competition.

Q. What do you mean? A state of imperfect competition, or what?

A. It would hardly even be a state of imperfect competition.

Q. What would it be?

A. I think it would be a state of arbitrary action on the part of a particular seller. It is hard for me to imagine what would lead him to take different prices. But if he merely as a matter of favoritism, let us say, he let this thing go to some friend at a lower price than another, that would be an exceptional case. And if it were
44914 rare and exceptional, it would still not deny the existence of pure competition.

Q. I am assuming a case where it is regular and intentional, not rare and not on the ground of friendship; in other words, a business policy.

A. That sometimes results when there is a difference in the quantity marketed.

Q. Assuming equal quantities.

A. And this seller without any reference to friendship or personal relationships lets the goods go to some buyers at lower prices than to others?

Q. Yes.

Mr. Bond: In the same market?

Mr. Wooden: Yes.

A. It is very hard for me to see—

Trial Examiner Norwood: Is that the absence of competition?

The Witness: Well, so far as that—No, that is not the absence of competition. That simply means, assuming that there is a market price, I take it, which is determined by competition, in this market this seller, for some reason which I have not been told, is giving a special favor to some buyer.

By Mr. Wooden:

Q. Well, I am assuming that the seller accepts regu-
44915 larly and intentionally different sums of money per unit of product from his various customers. What does that indicate to you as an economist?

Mr. Bond: Still in one market?

Mr. Wooden: Yes.

A. You are not drawing a distinction between the sum of money the seller receives and the price, I take it?

By Mr. Wooden:

Q. You would, would you?

A. It might be, yes. Oh, yes.

Q. All right. I won't debate that.

A. Well, if that is what you mean, if he accepts differ-

out sums of money, then, of course, it is possible that he has an arrangement with some of the buyers whereby they pay his part of the price and pay a part of the price to somebody else. That would be a normal and understandable situation.

Q. All right, let us use the simple word "price," then, if that troubles you.

A. Well, I still find difficulty in conceiving of a case in which that would regularly occur under all the conditions you have named.

Q. Wouldn't you find it difficult to assume that such a thing could occur under conditions of anything except monopolistic conditions?

A. Well, I find it difficult to conceive it even un-
44916 der monopolistic conditions.

Q. Well, at least it is possible, isn't it, that a monopoly may treat its customers arbitrarily in that way by accepting different prices from its different customers?

A. Yes, it is possible that a competitor might do so.

Q. But it is a characteristic?

A. It might be characteristic of monopoly.

Q. It would not be characteristic of an individual competitor, would it?

A. I do not think it would be characteristic of monopoly to accept a lower price than the going market price regularly without any particular consideration involved.

Q. Well, at any rate, wouldn't you say that it would not be possible as a regular thing without the existence of some form of monopoly?

A. No, I do not arrive at that conclusion.

Q. Yet you do not understand why any single producer should do it?

A. It seems to me a very unusual thing for any seller—a very strange thing for a seller to do even under competition or monopoly.

Q. Would you consider it an abnormal thing?

A. I think probably that word might describe it.

Q. As a matter of fact, don't economists when they theorize about price have to assume that sellers do not make different prices to their different customers
44917 under the same conditions?

A. We don't have to assume that. We can discuss this under various assumptions. Under perfect competition we assume that every seller and every buyer is

seeking his own interest and is energetic in so doing, and well informed. And if a seller under those conditions lets some of his product go to some buyers for less than the market price, he does so presumably because for some reason it is to his interest. I would not know why it would be to his interest. After you have ruled out the various considerations that occur to me as possibilities—

Q. Such as friendship?

A. Yes, such as friendship, or merely a mechanical situation, that part of the price is being paid in money to him and a part in some other way. And by the same token, if one seller in a market where pure competition—where perfect or pure competition prevails is selling to some customers at a higher price than the market price, that implies ignorance or inertia on the part of that buyer, which would not conform to the definition of perfect competition, and would not conform to the definition of pure competition, except as it was sporadic, an exceptional case.

Q. Assume a condition where not only one seller is accepting different prices from his different customers at the same time but where a group of sellers is each doing that. Would you consider that a rather abnormal
44918 and queer situation?

A. I would consider that a strange situation, if there were not any consideration present there to make it worth while.

Q. In other words, if such a thing should exist it would raise in your mind immediately the question there must be some reason for this; is that right?
44919 A. Yes, there must be a reason. There must be a reason for everything.

By Mr. Wooden:

Q. In other words, some compensating reason to offset the peculiar situation?

A. Well, some reason that would explain that peculiar situation.

Q. In other words, unless economists reason on the principle that sellers will make the same price to their different customers, you could not have anything but chaos, could you, in the economic reasoning on the subject?

Mr. Bond: I still object, Your Honor.

Trial Examiner Norwood: Overruled.

Let him answer it.

A. Well, that was not the conclusion of my answers to these various preceding questions.

By Mr. Wooden:

Q. Well, this question stands on its own footing.

A. The economist can reason about all sorts of conditions. He can make all kinds of assumptions and reason from them to their appropriate conclusions, and he can reason about a condition in which sellers are offer-
44920 ing different prices to their buyers.

Q. An economist cannot reason logically as to what the course of prices would be under given conditions of supply and demand, can he, unless he assumes that the sellers are going to make the same prices to their different customers?

Mr. Bond: Same objection.

Trial Examiner Norwood: Objection overruled.

A. He can add to whatever other assumptions he has got any other assumptions he pleases. If certain sellers were selling at two different prices, it would, of course, complicate the market situation.

By Mr. Wooden:

Q. Isn't the economic theory of the relation between price, demand, and supply based upon the principle that the sellers will make the same prices to their various customers at the same time?

A. Yes, it is, but that does not prevent the economist adding to that assumption any other assumptions he may wish about this other condition.

Q. All right.

In your testimony on page 44628, regarding perfect competition, isn't your testimony there substantially what you would describe in some of your published textbooks as being a perfect market?

44921 The Witness: May I see that part of the record? What was the page again?

Mr. Bond: 628 (handing record to the witness).

The Witness: The definition of perfect competition?

Mr. Wooden: Yes.

A. Yes, I think in my writings I say that perfect competition is what you would find in a perfect market, and a perfect market is marked by perfect competition.

By Mr. Wooden:

Q. And isn't that in accord with what you consider the consensus of opinion by economists?

A. I think so. Of course, you must recall that I have been writing for a good many years, and in some of my earlier writings I, as other economists, had not yet begun to make the distinction between perfect and pure and imperfect competition, which we are now making, so that it is likely that something I have written a good many years ago I would not have expressed myself as I would now.

And I might add, perhaps, that that does not imply a contradiction of what was written before but a progressive refinement of terminology and some progress in the analysis of the principles of price.

Q. Isn't there a point at which imperfect competition shades into imperfect monopoly?

A. The term "imperfect monopoly" is not very often used as a technical term. But using it in the sense
44922 in which I said in my testimony the other day, which might be logically accepted, that is, a state of monopoly which is not absolute and complete monopoly, then I hesitate to say that imperfect competition shades into monopoly.

We have certain considerations, certain requirements, which give us a state of perfect competition; certain somewhat different requirements that give us a state of imperfect competition; and certain other requirements of the state of monopoly. Now, in a general way, as you remove from the requirements of perfect competition some of them you may get to imperfect competition. And also, starting with imperfect competition, you might narrow the field until you had finally reached monopoly. That is true. But I do not want to go so far as to say that imperfect competition is just somewhere along on a scale from pure competition to pure monopoly, or from perfect competition to absolute monopoly at the other end.

Q. You would not want to say that imperfect competition may shade gradually into collusion?

A. No, I would not say it would shade into collusion at all.

Q. Well, isn't collusion imperfect competition?

A. No. No, those are not synonymous terms.

Q. In other words, whenever you used the term "im-

perfect competition," you intended to exclude collusive arrangements and monopolistic practices?

44923 A. No, I did not, Mr. Wooden. I think my definition of imperfect competition in the record stands and is quite clear. It is a definition which lays down certain requirements which are supposed to be met to give a condition of imperfect competition. Now, it might quite likely be true that in a state of imperfect competition there were some collusive activities going on, just as in a state of—well, I couldn't say perfect competition, obviously, but in the case of imperfect competition we might still have competition in general, with some collusive activities also present.

Q. That is just the purport of my questions, whether it does not shade off into collusion at times.

A. Well, I do not call that shading into collusion. Put it this way: Take the requirements of imperfect competition, which are mainly three: First, the small number of competitors and the sufficiently large amount of product, so that each competitor has some effect on the price, second, the lack of homogeneous commodity, so that buyers have some preference as between the different—the products of different sellers; and, third, a considerable degree of ignorance or inertia on the part of buyers.

Now, all three of those conditions do not have to be met to give us imperfect competition. The one that is most important, most generally governs, is the large quantity of the product sold by a comparatively small number of sellers.

44924 Now, given that situation of imperfect competition, there might be some limited acts of collusion going on between competitors, which would still not deny the basic condition of imperfect competition.

Q. Well, when you used the term "imperfect competition," you did not mean to exclude from it the possibility of collusive arrangements?

A. No, the definition would not do that, as a definition, but they would have to be so limited that they would not destroy the essentials of imperfect competition.

Q. The term "imperfect competition," then, might include two types of imperfection, one due to, you might say, natural conditions in an industry, physical conditions, let us say, and the other due to collusive arrangements?

A. No, that is not at all what I mean. What I have tried

to say was that imperfect competition, as marked by one or more of these industries of imperfect competition, might be accompanied by collusion. It is not the collusion that makes the state of imperfect competition; it is an accompaniment.

Q. Just an irrelevant accompaniment, so to speak?

Trial Examiner Norwood: Is it essential?

The Witness: It is non-essential to the point we are discussing, to the state of imperfect competition. I would not say it is non-essential from other points of view.

44925 By Mr. Wooden:

Q. Well, to say that an industry is characterized by imperfect competition is not to say anything very definite about it, is it?

A. Well, it says just that. It describes the character of the competitive condition under which it operates. It does not tell any more than that.

Q. What I am trying to find out is just how much it describes it.

A. Well, I think I can answer that, Mr. Wooden. Here is the term "imperfect competition"; here is a definition of it; here is a statement which you made hypothetically, that a certain industry exists under imperfect competition. Isn't that complete?

Q. It is not complete to me. I want to know what imperfect competition is in such an industry.

Wouldn't you agree, Doctor, that the degree and nature of imperfection in competition is of very great importance?

A. The degree and nature of imperfection—

Q. Is of very great importance?

A. Yes, I will agree to that.

Q. So, then, to use the term "imperfect competition," without considering the degree and nature of the imperfection in it,—what light does that throw on any situation?

44926 A. Well, imperfect competition is one kind of competition, and when you have said that an industry is operating under conditions of imperfect competition you have said that, and it may be that is a pretty important fact.

Trial Examiner Norwood: How is it valuable, then, in an inquiry as to whether or not there is collusion?

The Witness: Well, the mere presence of perfect or imperfect competition would not answer that question. That has got to be independently determined.

By Mr. Wooden:

Q. In other words, you say that the science of economics is unable to help in determining the nature and degree of imperfection there is in competition?

A. I did not say anything that even remotely resembles that.

Q. I am asking you now.

The Witness: Would you repeat it?

(Question read.)

A. The answer is "No."

Q. What do you mean by that, that it is unable or is able?

The Witness: Read the question again.

(Question again read.)

A. The answer is "No."

Q. I want to know what you mean by it. Is it unable to help or is it able to help?

A. You did not ask me that. You asked me what I said.

44927 Q. Well, I will ask you that now—if you want to debate:

I will ask you if the science of economics is able or unable to help in determining the nature and degree of imperfection in competition?

A. Is able.

Q. All right.

Did you feel that you were able in answering the hypothetical questions put to you to determine the nature and degree of imperfection in competition in the cement industry?

A. I was not asked those questions.

Q. I am likely to ask many questions that were not asked on direct.

Mr. Bond: It is the form of your question, Mr. Wooden.

Mr. Wooden: Read it.

(Question read.)

A. That question is connected to my answer to certain hypothetical questions, and in answering those questions I thought I was able to do everything I was required to do to answer the questions, and I will be glad to answer the question on the degree of—

44929 Q. If I were to repeat to you the hypothetical questions put to you by Mr. Bond on direct, in answering them now would you claim to be able to determine the nature and degree of imperfection in competition in the cement industry?

A. On the basis of those hypotheses?

Q. Yes.

A. Yes, I would, so far as those hypotheses go.

Q. Will you tell me now the extent to which competition in the cement industry is imperfect?

A. According to the hypotheses?

Q. Yes.

A. According to these hypotheses, there is a comparatively small number of manufacturers of cement, each one producing a very large quantity which he undertakes to market.

By Mr. Wooden:

Q. Now, Doctor—

Mr. Bond: Now, let him finish his answer.

Mr. Wooden: I submit I am entitled to interrupt here.

44930 Trial Examiner Norwood: Let him—

By Mr. Wooden:

Q. If you are starting out—

Trial Examiner Norwood: Let him explain here.

By Mr. Wooden:

Q. If you are starting out merely to repeat what you have already testified to on direct in those respects, I do not care to have it repeated. I do want you, however, to give us some quantitative measurement of the degree of imperfection in competition in the cement industry which you say you are able to tell us the extent.

A. The question you asked, as I remember it, first, was whether I was able to tell the degree of imperfection of competition in the cement industry on the basis of the—so far as the hypothetical statements went, and that is the question which I said I was able to answer, and

44931 which you have now asked me to answer.

According to these hypotheses, the cement industry has a comparatively small number of mills, each one selling a relatively large part of the total output. There are a large number of buyers. There are many hypotheses

here which show that as soon as one mill takes action there are repercussions on the part of its competitors, and that these have an effect upon price. Now, that condition alone is enough to characterize this situation as imperfect competition, and that is as far as the hypotheses go, and I only expressed my ability to answer on the basis of these hypotheses in so far as they permit it.

By Mr. Wooden:

Q. Let us, Doctor, to make my question clearer,—let us assume varying degrees of imperfection in competition ranging from one to a hundred. What degree within that range would you assign to the cement industry under the conditions stated in the hypothetical question?

A. Economists do not set up a scale of imperfection from one to one hundred.

Q. Well, how can you measure degree unless you do?

A. We can take whatever hypotheses are given to us and say that this condition is imperfect competition. There are certain conditions in this market. There are certain other conditions which mark it off from perfect competition; others that mark it off from monopoly. And 44932 we can say that this condition does not even approach monopoly on the basis of these hypotheses. We can say it is clearly not pure competition on the basis of them. And from these hypotheses we can draw just so much conclusion as to the degree. Now, the reason I cannot draw you a more precise conclusion as to the degree is that I haven't got the hypotheses for it.

Trial Examiner Norwood: You said that you could give us the extent. You have merely stated the existence—

The Witness: No.

Trial Examiner Norwood: —of imperfect competition.

The Witness: Excuse me.

I said I can give the degree so far as the hypothetical questions went.

Trial Examiner Norwood: But did they go far enough to make any judgment in that respect?

The Witness: Only that this—as I have just said, this is clearly a case of imperfect competition, that it does not go away over to a state close to monopoly. I can easily gather that.

Trial Examiner Norwood: Does it approach collusion?

The Witness: I don't quite think of collusion as some-

thing that competition approaches, but I can say definitely that it does not approach collusion on the basis of these hypotheses.

44933 Trial Examiner Norwood: Does it approach a condition which could be brought about by collusion?

The Witness: Well, we went into all that this morning.

Trial Examiner Norwood: Just answer the question directly, whether it could or whether it could not.

The Witness: It could not be brought about in general, these hypotheses taken as a whole, by collusion. And it certainly is not even close to perfect competition.

Now, assuming the scale from one to one hundred;—I assume one is perfect competition and one hundred is monopoly—

By Mr. Wooden:

Q. No. One is a low degree of imperfection and a hundred is a high degree of imperfection. Where in the scale would you place this industry as to degree?

A. So far as these hypotheses go, I can't place it any closer than I have, and that is all I express the ability to do, to go as far as these hypotheses would permit.

Q. In other words, you get it into the general category of imperfect competition, but you can't tell us just how imperfect it is.

A. Not in any precise numerical order. On the basis of these hypotheses, no, I can't.

44934 Q. I gather that you were—you said a moment ago that it was far from a condition of perfect competition on the basis of the hypotheses.

A. I said it does not come close to the condition of perfect competition, for the very obvious reason, one alone, the smallness of numbers and the very definite reaction of other competitors to the acts of any one competitor. That completely removes it from the picture of perfect or pure competition.

Q. I was just going to ask you about the pure competition. It also removes it from the category of pure competition.

A. Yes, it does.

Q. But just how far along in the category of imperfect competition you can't say?

A. I haven't got enough hypotheses.

Q. And yet you agree, as I understand it, that the degree and nature of imperfection are important.

A. They might be from some points of view. Certainly the nature of imperfection is important, and that is shown here.

Q. Where does an economist,—or, I should say, where do you as an economist draw the line between the nature and degree of imperfect competition that is socially desirable and that which is not socially desirable?

A. I as an economist am always reluctant to draw ethical or moral conclusions. And when you say a thing is desirable or undesirable, that is not really the business of science to answer. Any science, either physical
44935 science or economics, does its task when it marshalls the appropriate facts, when it arranges them, and when it formulates the necessary relations of cause and effect between the proper phenomena. We determine that under such and such conditions such and such results will follow, if other causes do not interfere. Now, whether those results which the science tells you will follow certain conditions are desirable or not, even socially desirable or not, if you choose, is a matter of judgment on which people may have different opinions and which can't be settled by the science of economics. In other words, it implies some standard, and you judge a thing as desirable or undesirable according as it approaches the standard.

At the expense of wearying the Commission, I might give an illustration:

The science of economics tells pretty definitely, and with a very high degree of certainty, I think, the economic consequences of a policy of protective tariff which will produce such and such a result. I do not need to enumerate them. Now, having arrived at that conclusion, you will find some people will say that result is very desirable; you will find other people will say it is very undesirable. An economist does not answer that question whether it is desirable or undesirable. Now, you can give any definition to your standard you choose and say by "socially desir-
able" I mean just so and so, and then perhaps such
44936 a question could be answered.

Q. Well, don't you as an economist draw the line between what the nature and degree of competition is socially desirable in the cement industry, between whether it is collusive in character or whether it is competitive in character?

A. Well, I made a statement in answer to one of your questions this morning, I believe, or perhaps to one of the questions on direct—I forget—about public interest, and I was then getting very close to this ethical judgment, as you will recognize, and I was careful to use the term "public interest" assuming that by that we mean all about the same thing, and I said that in my opinion that public interest is served better by competition in private industry than by monopoly or combination or collusion. Now, I think perhaps that is responsive to your present question.

Q. Yes, I think it is pretty near so.

When you testified that imperfect competition is common in manufacturing industries, did you mean to exclude from the term "imperfect competition" collusive arrangements in industry?

A. I was not thinking of collusion as entering into that question at all.

Q. You were merely meaning, I take it, that manufacturing industries with high fixed capital costs and high overhead costs, and so forth, and few in number
44937 represented, from those factors alone, a condition of imperfect competition, compared to the economist's concept of perfect competition.

A. I did not base it on quite those considerations. I do not bring in the presence of high overhead as one of the necessary requirements of imperfect competition. The second one that you named, the smallness of the number of the manufacturers compared with the total output of the industry, is very generally prevalent. The ultimate test is whether the action of one competitor has an effect upon the price and upon the action of other competitors.

Now, I mean to say, without regard to collusion, that practically all manufacturing industry, so far as I know, does operate under that condition.

Now, there are other conditions which may also operate to make it imperfect competition, such as the differentiation between the product.

The low-grade automobile industry, for instance, is an industry of imperfect competition, because the product—we will take the three low-grade cars, Ford, Chevrolet, and Plymouth, we will say, are slightly differentiated. Well, they are all in competition with each other. In that one class of low grade automobile different buyers have different preferences. So it is not a homogeneous commodity.

That would make the low-grade automobile industry an imperfectly competitive industry, and then there is
44938 the other one of ignorance or inertia on the part of buyers.

Taking those three things together, I would say that I could not think of any important manufacturing industry in the United States, which, for one or the other of those reasons, would not be found to be operating under imperfect competition.

Q. As an economist, would you expect competitors to cooperate to increase the severity of competition among them?

A. Not ordinarily, no.

Q. Wouldn't you think it a rather very extraordinary thing?

A. I think it would be. I do not want to say that it could not possibly ever occur.

Q. Have you ever known it to occur?

A. I do not think offhand of such a case.

Q. Do you as an economist recognize that competitors may cooperate to increase the degree of imperfection in competition among them?

A. I do not think of competitors getting together for that particular purpose. Of course, competitors might take collusive acts which would work in that direction. The simplest case would be if we had fifty competing mills and by combination they finally brought themselves down to ten mills instead of fifty. Now, it might be that as a result of that the competition would be less perfect, but that is a very dangerous inference to draw. Sometimes the
44939 competition between the small number of large concerns is more vigorous and active than that of a larger number of weaker concerns.

Q. Well, just ignore for the moment the matter of merger or combination of ownership. But can you as an economist visualize easily a situation where competitors cooperate while maintaining their individual, independent ownerships to increase the degree of imperfection among them?

Trial Examiner Norwood: Imperfection of competition?

Mr. Wooden: Yes.

By Mr. Wooden:

Q. Competitive sellers I am speaking of.

A. Well, I have all along had some difficulty in getting

your concept of the degree of imperfection, except in its very general way in which I have described it, and I don't offhand think of why competitors would combine or form an agreement in order to increase, did you say, the degree of imperfection?

Q. Imperfect competition.

A. Yes. You see, we economists do not generally think of imperfection in terms of its degree, but rather as a kind of competition indicated by these indices.

Q. Does that last answer mean that competitive sellers will or will not cooperate to increase the degree of imperfection in competition among them?

44943 Washington, D. C.,
Friday, September 27, 1940.

44944 FRED R. FAIRCHILD thereupon resumed the stand and testified further as follows:

By Mr. Wooden:

Q. Dr. Fairchild, when you testified on page 44615 that on the basis of the hypothetical question you were then answering, that the conditions described in your opinion as an economist could result as a logical and historical development of such an industry. By "logical and historical development," did you mean the same thing as your testimony to the effect that it could arise—could have arisen—could result from a condition of free competition?

A. This is not an identical statement to that.

44945 Q. Is it identical meaning, that is what I want to know?

A. It would imply, I think, that it was logical and without an inference of collusion.

Q. In other words, you answered as you did that it was logical and historical development because of your other answers that it could result from free competition; is that correct?

A. No, not precisely that. As I said, the statement that it could logically be the result of an economic development is not identical with the statement that it sets up no inference of collusion. Logically, I meant it was natural, what one might expect to find under the conditions as described in the hypotheses.

Q. Without collusion.

A. It would set up no inference of collusion to my mind.

Q. I am just trying to find out how much more this answer meant when you gave it than the other answer to the effect that it could result from free competition. You say it meant something different. Now, tell us how much more it meant.

A. I think the term "logical" is somewhat broader than "without inference of collusion." That is a specific question. When I was asked in connection with another hypothetical question whether this situation set up in my mind an inference of collusion, that was a specific question relating to that one definite thing. This, I take it, is a broader question asking me to state whether in my opinion these marketing practices could naturally or
44946 logically result, whether they would be the sort of practices one might expect naturally to result under these circumstances.

Q. Well, did you mean that they could result from, as a logical and historical development with collusion?

A. No, I did not mean that.

Q. Well, then, you did not mean any more, did you, than to say that it was a logical and historical development without collusion?

A. Well, when you put in the word "with" or "without" collusion you are adding something that was not in this specific question, and I can only repeat that I think this question called for a somewhat broader opinion than another question which was specifically devoted to the matter of collusion or of competition.

Q. You had some elements in mind other than collusion or free competition when you answered that question?

A. Yes, other than the mere question whether an inference of collusion was set up.

Q. Now, Doctor, you used the term yesterday, and on direct also, regarding pure competition as being a gradation some little distance away from perfect competition. Doesn't that concept also call for corresponding concept of impure competition?

A. No, it does not.

44947 Q. How do you tell whether a thing is pure except by comparing it with something impure?

A. Well, I should remind you first of all that these

terms "pure" and "perfect" are technical terms used in economics and given technical definitions, and they are intended to carry no ethical concept of being right or wrong, or righteous or virtuous, or pure or perfect in the ordinary sense.

Q. I did not mean any ethical implication. I mean economic implication.

A. Well, when we choose a word like "pure" to describe a certain kind of competition, that may be as far as we need to go. We do not have to set up another category which we call by the opposite word, "impure," and as a matter of fact we do not.

We have, according to my terminology, we have a perfect competition with its definition, pure competition with its definition, and imperfect competition.

Trial Examiner Norwood: Well, didn't you use that word in order to distinguish a certain kind of competition from other kinds of competition?

The Witness: Yes, Your Honor, to distinguish it from perfect competition, on the one side, and imperfect competition on the other, but that does not leave any area for a fourth category of impure competition.

By Mr. Wooden:

44948 Q. You would not agree that any form of imperfect competition could be impure competition?

A. No, I would not, simply because I just do not—this is a matter of terminology. I just do not use the term that way.

Q. Now, on page 44636-7 you testified that imperfect competition was free competition, didn't you?

A. 36?

Q. 36 and 37, under questions by the Examiner.

A. Oh, yes, I have found it.

Yes, I testified that imperfect competition was free competition, and at that time without having given a definition, I believe, of free competition. That did not mean that the two terms were identical terms. It means that the imperfect competition was correctly characterized as being also free competition.

Q. Do you mean to say that imperfect competition is free competition without taking into account the degree of imperfection or the nature of the imperfection?

A. Well, I would like to make—I think it would clear up my answer to that question if I may be permitted to

make more clear this concept of degree of imperfection in perfect competition.

Q. Well, if you will answer my question then you can explain all you like.

A. Very well.

44949 Could I hear that question read?

Trial Examiner Norwood: Read it.

(Question read.)

A. What I would have to take account of to characterize this, any state of competition, as free competition would be whether or not there was present collusion or agreement, combination, among the competitors. Now, that does not require me to take into account at all the degree of imperfection; and now with your permission—

By Mr. Wooden:

Q. Doesn't it require you to take into account the nature of the competition?

Mr. Porter: Let the witness answer.

Trial Examiner Norwood: He has answered it. Let the lawyer conduct the examination.

By Mr. Wooden:

Q. Didn't you just then say you did have to take into account the nature of the competition?

A. No, I do not think that is implied in the question you asked me.

44954 Q. Well, from what you have just said I infer; Doctor, that the science of economics is not concerned with the degree of imperfection, but merely whether it is imperfect; is that right?

A. Except in this limited way in which I have just said it was significant.

Q. And is it also helpless to aid in determining the degree of imperfection?

A. Also with the exception of this limited application, the degree of imperfection.

Q. You testified that no manufacturing industry that you were aware of had perfect or pure competition; is that correct?

A. Yes, I did, in the United States. I think that was included in my answer.

Q. What do you base that sweeping assertion on?

A. Well, in my answer I was fearful to use language to indicate not that I had made an examination of every

manufacturing industry in the country, but that in answer to the question I could not think offhand of any manufacturing industry which would be operating under conditions of pure or perfect competition, and—

Q. All of them under imperfect competition?

44955 A. All of them under imperfect; yes, sir; and I based that conclusion upon my being unable to think of any manufacturing industry in the United States in which the number of manufacturers was so small compared with the total output of the industry that any one manufacturer's offerings would have no effect upon the pricing. No manufacturer would be concerned in the actions of his competitors in the industry.

Mr. Porter: Your Honor, I think the witness misspoke himself. He said "so small." I think he meant "so large."

The Witness: Thank you. I did mean "so large," and the share of each one's offerings—

Mr. Wooden: Read it. Perhaps that will help.

Mr. Bond: Off the record a minute.

Trial Examiner Norwood: Yes, off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Go ahead.

The Witness: Each one's offerings so small.

By Mr. Wooden:

Q. Doctor, you testified regarding your opinion that it was impossible for one mill to sell on a uniform f.o.b. mill basis if others did not; do you remember that? And that if it did so—

A. Could you refer me to the place in the record,

44956 Mr. Wooden?

Q. Well, page 44640.

You recall it, though, do you not?

A. Yes. I would like to be sure I have the exact language I used.

Q. Do you find it?

A. Yes, I find it.

What I testified was that if one manufacturer did make that change, and others did not follow—

Q. Well, now, I do not think you need to re-read what you said there. I have not asked you anything. I—

Mr. Bond: If Your Honor please—

Q. —I just referred you to that testimony, and I did not mean to do that. I am doing it as a courtesy to you.

Mr. Bond: If Your Honor please, I submit that the paraphrase that Mr. Wooden has used in the question does not correctly state the witness' testimony on direct.

Mr. Wooden: What did I say?

Mr. Bond: You said that it was impossible for a mill to do this. I do not find the word "impossible" in the witness' answer.

Mr. Wooden: Oh, did I say "impossible"?

Trial Examiner Norwood: Read the question.

Mr. Bond: I have the question read and you will see.

44957 Mr. Wooden: If I did, I apologize.

Trial Examiner Norwood: Read the question.

(Question read.)

By Mr. Wooden:

Q. And if it did so, if it would result in such serious loss in price reduction on sales in his own territory, you thought the result would be ruinous to him?

Mr. Bond: Won't you strike the word "impossible"?

Mr. Wooden: Yes, I will be glad to.

A. Yes, I find the latter part of your question in my answer, but I do not—

By Mr. Wooden:

Q. Substitute "impracticable" for "impossible."

A. Well, I did not even use the word "impracticable." I have used the language which you have just used now in the latter part of your question.

Q. Well, all right. You find what I have just read to you, don't you?

A. Yes, I find that without any reference to impossible or impracticable there.

Trial Examiner Norwood: What did you say there?

The Witness: "That would involve, however, such serious loss through price redretion on the sales within his own territory that I should think that the result would be ruinous to him."

44958 Trial Examiner Norwood: Did you say "impracticable" or "impossible," or what did you say?

Mr. Wooden: He did not use either word.

The Witness: I did not use either word in my answer.

Trial Examiner Norwood: What did you use?

The Witness: I have just read—perhaps I misunderstood Your Honor. I have just read from the record the answer I made to which I suppose Mr. Wooden is referring.

By Mr. Wooden:

Q. So far, Doctor, I have just merely been directing your attention to your testimony which I have read, and certain lines on a certain page.

My question is this: You do not consider as an economist, do you, that what you call the ruinous effect upon some particular mill of a given method of marketing is something that the economist must think bad under conditions of free competition?

A. I would hesitate to say that it was bad, because as I explained at some length yesterday I do not like to draw these ethical or moral judgments.

Q. Well, I am not talking that way, either; when I say "bad," I mean bad economically.

A. We do not use the word "bad" in economics.

Q. Nothing equivalent to it?

A. No, because I cannot see how "bad" can be
44959 used except with the implication that it violates or falls short of some ethical or moral or other standard.

Q. Well, do you think that an economist dealing with the theory of free competition can be concerned with the fact that under it some concerns find it ruinous?

A. Oh, yes, an economist would consider matters of that sort.

Q. On an economic basis, or on some ethical sentimental basis?

A. On an economic basis.

Q. You do not think as an economist, do you, that the fact that competition may be ruinous to certain parties engaged in it would necessarily lead to monopoly; do you?

A. No.

Q. Well, then, unless it leads to monopoly why should the economist be concerned about the fate of some individual concern under stress of competition?

A. Well, part of our work is to study the whole subject of competition, and as we study the operations of competition one of the things we observe is that it is more or less continually tending to wipe out certain competitors.

Q. That is normal, isn't it?

A. That is more or less normal under ordinary competition, and naturally that is something with which we are concerned.

Q. Not only normal, but it is inevitable under free competition, isn't it?

44960 A. Inevitable is a strong word. I would rather stick to the word "normal." We expect in the normal operation of competition that the weaker competitors will from time to time be driven out. We do not expect a competitor to deliberately take action which would be ruinous to him.

Trial Examiner Norwood: Could you say "no" to "inevitable"?

The Witness: Well, if you will give a long enough period of time, Your Honor, I think it is perfectly safe to say that the failure, bankruptcy of some competitor in some industry is inevitable. I dislike to use such absolute term when a more moderate term is just as useful.

By Mr. Wooden:

Q. Now, Doctor, on page 44641 you testified about the storm of protests that a mill would receive from its customers who found him charging different f.o.b. mill prices, and again you came back to that and repeated the same thought on page 44725; your theory underlying that testimony is that buyers would resent a mill taking different prices f.o.b. mill from its different customers; isn't it?

A. My answer was based on the assumption of a—first, on the assumption of uniform f.o.b. mill system. Then I was asked what would be the difference if the mill had various f.o.b. mill prices which it quoted to different buyers, and I expressed the opinion that under those conditions the buyers who were charged the higher price

44961 for cement delivered to them at the mill would resent a lower price charged for it delivered at the same point to other buyers.

Q. Well, you meant, didn't you, that the buyers that were paying a higher f.o.b. mill price would resent the fact that other buyers were paying a lower f.o.b. mill price, regardless of where they were going to take it?

A. I take it from "f.o.b. mill price" means that delivery at the mill.

Q. And the buyer can take it wherever he likes?

A. Oh, yes, where he takes it after it buys it is not in that consideration.

Q. Well, now, assume that each mill that now sells on a delivered price and takes varying mill nets as the result of selling on a delivered price varying mill nets from its different customers, were to announce that effective next week, "I am going to make f.o.b. mill prices to all my customers and the f.o.b. mill prices are going to be what are now my varying mill nets." Do you think there would be a storm of protests from buyers over that?

A. I think there would. Buyers would think, "We are now getting our cement delivered only at the place of the mill, the point of the mill, and some buyers are being charged more and some are being charged less. The optional method of taking the mill by truck or freight or otherwise would arise, and I think there would be
44962 protest and discontent among the buyers.

Q. But, as a matter of fact, the amount paid by the buyers, respective buyers, to the seller, and the amounts received by the seller from the respective buyers would be just the same as now, wouldn't it?

A. At the very instance when the change was made you might not have changed the amount which the buyers would pay for their cement. By that I mean the price of the cement, and whether or not part of it is paid to a railroad company and the amount received by the mill would not be the same as received by the buyer, because now the mill would not receive anything for freight.

44963 Q. Doctor, when you answered as you just did, were you answering on the assumption that it had been the custom for mills to pay the freight?

44964 A. Well, when you asked me if it would not be true if the amount of money would be precisely the same as before—

Q. Well, now, why not answer the question I just put to you.

Trial Examiner Norwood: Read the question.

The Witness: I was undertaking to answer it.

Mr. Bond: That is what he is doing now.

Mr. Wooden: No, he is not.

(Question read.)

Trial Examiner Norwood: Now, you can say "yes" or "no" on that, I think.

A. Well, I was recognizing the possibility that that

might have occurred, and if that did or did not occur it would make a difference in whether or not the mill received the same amount of money under the one system or the other.

By Mr. Wooden:

Q. Well, were you talking about the possibility, or were you talking about the assumptions that you made when you answered—testified?

A. Well, I could not answer your question positively without recognizing that there might not have been before that a custom by which the buyer paid part of the money to the railroad company and part to the mill; whether or not that were the facts I am not saying, but I can conceive of it as a possibility, and that would make a difference in my answer to your question.

44965 Q. As a matter of fact, didn't you understand from the long hypothetical question put to you by Mr. Bond that it was the custom for buyers to deduct the freight from the invoices and pay it to the railroad?

44967 Q. I am asking you this, Doctor,—let us do it again.

Let us assume that the common practice, the usual practice, in the industry has been for the buyer to pay the freight to the railroad company and the railroad company made no accounting of that payment of freight to the seller, and the buyer deducted the amount that he paid to the railroad from the face of the invoice showing the delivered price and remitted the balance to the seller.

Now, wouldn't the amount have been the same remitted to the seller if the seller had had in effect an f. o. b. mill price reflecting the amounts paid him?

A. I do not know what that would have been if other circumstances had been different. Your question was whether after a change had been made from the basing-point system to the f. o. b. mill system the amount received would be the same, and under the hypotheses which you have now stated the amount which the buyer remits to the seller, being the seller's mill net, and as I think you stated the seller now selling keeping the same mill net as before, the amount received in money would be the same.

Q. Yes.

44968 A. That does not mean that the price of cement would be the same.

Q. Well, why wouldn't there be a storm of protests from the buyers if they knew that they were paying these varying mill nets to the seller just as when they know they are paying the different varying f. o. b. mill price to the seller?

A. The whole difference arises from the difference in the delivered point of the cement. If all buyers at a certain delivery point are paying the same price to the mill I think they would not be disposed to complain and consider that some of their competitive dealers were having a special favor. If on the other hand different dealers go right to the mill and there buy cement and find some of them are charged one price and some another, that is a different situation, and I think is much more likely to lead to ill will.

Q. Well, suppose that we assume that some consumer buyers, instead of dealer buyers, then would the consumer buyers interested, and would there not be a storm of protests if they found that the mills are charging different consumers different prices at the mill?

A. I think they would. Of course, the consumers have less reason to be disturbed, because they are not so directly in competition with each other as dealers are, but I think if consumers found that at the same point of delivery some consumers were being charged one price and others 44969 another price they would resent it.

Q. You would not blame a consumer for resenting the fact, would you, that he could not get a price at the mill which enabled him to get his cement delivered where he wanted to use it from one mill any less than he could from another?

A. Well, I think what the consumer would consider would be the price he paid for cement at the place it was delivered to him.

Q. But, Doctor, don't you recognize that a consumer by getting a price at the mill and providing his own transportation might be able to get a lower delivered price or a lower delivered cost?

A. Lower than what?

Q. Lower than he is paying delivered by rail?

A. That might be possible if he were able to use trucking or some other means of transportation.

Q. And you would not think there ought to be any storm of protest over that sort of situation?

A. Well, the protest would come from the fact that consumers buying from a mill at any particular point found that other consumers were getting a lower price than they at the point of delivery of the cement.

Trial Examiner Norwood: Now, on the uniform f. o. b. system they would not have that complaint, would they

The Witness: No. If the consumers came to the
44970 mill and bought under a uniform f. o. b. system they would not be disposed to complain.

By Mr. Wooden:

Q. Each consumer there could transport the cement in any way he liked that was more economical or satisfactory to him; couldn't he?

A. Yes, if he bought the cement delivered at the mill he could transport it as he chose.

Q. Now, Doctor, assume that you have an optional arrangement whereby some buyers are permitted to f. o. b. mill and other buyers prefer to buy delivered; assume that there are two important towns, say, 50 miles apart, and that the dealers in those two towns have some business for which they compete in the area between those two towns.

Now, suppose there are—a dealer in one of those towns finds out that his competitor over in the other town is getting a lower f. o. b. mill price than he, they are both buying under the f. o. b. mill system by option of theirs, not a uniform f. o. b. mill, understand, but one of them finds out that his competitor is getting a lower f. o. b. mill price than he. There would be protest there, wouldn't there?

A. I think there would.

Q. Well, now, suppose there are other dealers in those same two towns that prefer to buy delivered, and are buying delivered, and the delivered price from various
44971 manufacturers laid down in those two towns, that is, in each of those two towns, is the same in each town, that is, there may be a difference between the towns, but in each town it is the same.

Suppose the first two dealers were buying f. o. b. mill and whom you say would protest if they found that one was buying at a different f. o. b. mill price than the other, were to be informed that—well, it is true you are paying different f. o. b. mill prices, but those f. o. b. mill prices merely reflect exactly what your competitors in the same

two towns are paying delivered, then what would be the situation?

A. I think they would still feel that they were not fairly treated because here is an optional method in which any dealer can choose either to take his cement delivered at his own place or buy f. o. b. mill, the f. o. b. mill prices are, you say, not uniform but vary between different buyers, and I think still any mill that found—any dealer that found that when he went to the mill to buy some other dealer could go right there to the same mill and buy lower, would think he was being discriminated against regardless of what some other dealer might have obtained through a delivered freight basis. I would go even further and say that the very fact of these two optional methods, and especially the lack of uniformity in the f. o. b. mill price, would doubtless lead to very general displeasure and complaint among dealers, and they might very likely go so far

44972 as to compare delivered prices that some dealers were getting with the f. o. b. mill prices plus freight that someone else was getting into that same town, and think that perhaps some dealers had opportunity to truck their cement in from the mill which they, themselves, did not have, so that that now runs into the matter to which I have already testified.

Trial Examiner Norwood: Well, wouldn't that last cause, it would be the chief one?

The Witness: That would be a difficulty; even if there were an option between delivered price and the uniform f. o. b. mill price. I think the difficulty would be still greater if there were variable f. o. b. mill prices, but the difficulty which I have been now asked, arises chiefly or, I think, out of the assumption of a variable f. o. b. mill price which I think would arouse resentment.

Q. Well, Doctor, wouldn't you say that under the circumstances posed that the dealers who were buying delivered and who found that they were paying a different mill net than other dealers with whom they were competing, wouldn't that give them just as much economic ground for complaint and protest as the dealers who were buying f. o. b. mill?

A. With other dealers in your question also buying on a delivered basis, I take it?

Q. Assume that some are buying f. o. b. mill and

44973 some were buying delivered.

A. No, I think that as long as dealers, so far as

the delivered price goes, as long as the different dealers saw that the delivered price at the point at which they and their competitors were located was the same to all who choose to take the delivered-price basis, they would have no ground of complaint so far as the delivered price went.

Now, I have already testified that they might be disturbed because the optional f. o. b. basis gave some of their competitors opportunities to get the cement cheaper than they themselves get it.

Q. You meant by using other forms of transportation than rail?

A. Yes, some of their competitors might have some trucking opportunities which they themselves did not have, and so be able to take advantage of an option which they could not exercise and so create a feeling of inequality which would be disturbing to the industry and to the dealers' relations with the mill, but I take it your question particularly relates as to whether there would be complaint on the part of a dealer receiving his cement on a delivered-price basis because some other dealer had, I believe you said, a different mill net from his—was that the question?

Q. Yes, and they are in competition.

A. Of course, if the cement came from the same
44974 mill, and the delivered price is the same, I should suppose the mill nets would be the same for the two if it came from the same company.

Q. It would not be if one dealer bought f. o. b. mill and trucked it?

A. No, I was comparing two dealers, both of whom bought on a delivered basis.

Trial Examiner Norwood: The sum and substance of it is that you think a difference in price to the customers is made in the form of f. o. b. mill price, would cause dissatisfaction, but if made in the form of a varying mill net it would not cause dissatisfaction?

The Witness: Well, I think, Your Honor, that what I intend to say is that the dealers in deciding whether or not they are being fairly treated will give attention to the price at which the cement is delivered to them whether it is f. o. b. mill, or—

Trial Examiner Norwood: Now, you can answer my question "yes" or "no."

The Witness: Well, I think I had to modify it somewhat.

Trial Examiner Norwood: In the one form there would be dissatisfaction and there would not be in the other, regardless of the reasons for that; is that what you say?

The Witness: No; that is not precisely what I say, Your Honor, because so far as if there were a uniform
44975 f. o. b. mill price that would not cause dissatisfaction as between the mills, as between the dealers who chose to take f. o. b. mill price.

Trial Examiner Norwood: But you do say that differing f. o. b. mill prices, differently in different places, would cause dissatisfaction; do you say that,—do you not?

The Witness: Yes, I say that.

Trial Examiner Norwood: Now, you say that differing prices through varying mill nets, varying according to the cost of transportation, and so on, does not cause dissatisfaction; do you not say that?

The Witness: No. I say that different mill nets to dealers who are getting the same delivered price at the same place would not.

Trial Examiner Norwood: Would not cause dissatisfaction?

The Witness: Would not cause dissatisfaction, but I pointed out that I could not see how you could get different mill nets—

Trial Examiner Norwood: Regardless of the fact that the cost of cement laid down at these places was the same; is that right?

The Witness: It is not so much a matter of demand—do you mean cost to the buyer?

44976 Trial Examiner Norwood: It doesn't make any difference in your two answers?

The Witness: Do you mean cost to the buyer?

Trial Examiner Norwood: Yes.

The Witness: What I am talking about is the price.

Trial Examiner Norwood: Wait a minute. Please answer my question.

It doesn't make any difference in your two answers?

The Witness: I think I will have to ask you to repeat that, Your Honor.

Trial Examiner Norwood: Read the two questions and the two answers.

(Record read.)

Trial Examiner Norwood: Don't you understand what I mean?

The Witness: I do not, frankly, Your Honor, understand what your question does call for.

Trial Examiner Norwood: Well, in the one case you testified that there would be no dissatisfaction provided the delivered costs were the same at the same points of delivery.

The Witness: Well, there have been a good many—

Trial Examiner Norwood: Although there is a difference of mill nets charged as between points, you said that that would not cause dealer dissatisfaction, didn't
44977 you?

The Witness: That of itself?

Trial Examiner Norwood: Yes.

The Witness: But you will recall, Your Honor, that there has been brought into this question—

Trial Examiner Norwood: Now, I am not bringing anything into the question but your—

The Witness: Well, can I assume—

Trial Examiner Norwood: Can you answer that, or not?

The Witness: I have to have an assumption as to whether or not we have the optional f.o.b. or delivered price in effect, or the present basing-price system.

Trial Examiner Norwood: No, you don't have to assume anything like that because this question poses the situation where there is a delivered price at the point.

The Witness: Oh, but it doesn't tell me whether there is also the optional f.o.b. mill.

Trial Examiner Norwood: Don't assume anything that I have not assumed in the question. That is out. I said on this system.

The Witness: But I can assume—

Trial Examiner Norwood: I do not see any reason why you should introduce that.

The Witness: I introduce it—

44978 Trial Examiner Norwood: (Continuing) Point of confusion.

The Witness: I am not trying to confuse the issue, Your Honor.

Trial Examiner Norwood: Well, you are confusing it.

The Witness: But my answer to your question, whether there will be discontent, will depend upon whether I can assume that all cement is delivered upon a delivered price basis.

Trial Examiner Norwood: Yes. Well, you assume that, would there not?

The Witness: Yes, if I assume that I can easily answer the question that the difference in the mill net to dealers who received the same delivered price at their mill location would not ordinarily be a cause of complaint.

Trial Examiner Norwood: Well, on the same circumstances, suppose that this same cement were shipped to the same customers at the same price, but through different f.o.b. prices made to equalize the cost of the cement as delivered, under those circumstances would there be dealer dissatisfaction?

The Witness: Now, you are assuming it is shipped from different companies, are you not?

Trial Examiner Norwood: No, the same company.

44979 The Witness: How could one company have different mill nets when shipping to—

Trial Examiner Norwood: I am not talking about mill nets now. I am talking about f.o.b. prices which would be the equivalent of the mill nets in the other questions.

The Witness: But you said different f.o.b. mill prices.

Trial Examiner Norwood: Yes, differing f.o.b. mill prices as between different points.

The Witness: Oh, as between different points?

Trial Examiner Norwood: Yes.

The Witness: Not as between different dealers in one point?

Trial Examiner Norwood: No, sir.

The Witness: Well—

Trial Examiner Norwood: Would that cause dealer dissatisfaction, or not?

The Witness: Well, if those dealers went to the mill and bought cement f.o.b. and found that other dealers from any place at all could go right to the mill and buy cement f.o.b. mill at a lower price than they could, I think that would cause dissatisfaction.

Trial Examiner Norwood: Regardless of the fact that they were paying the same delivered prices under the other system?

44980 The Witness: Yes, I think so, Your Honor. I repeat that I believe what the dealers think of is the price they have to pay at the point where the cement is delivered to them.

Trial Examiner Norwood: Are you assuming that the dealers do not know about these differing mill nets?

The Witness: No, I am not making such an assumption.

Trial Examiner Nowood: All right.
Go ahead.

By Mr. Wooden:

Q. Well, as a matter of fact, Doctor, are you assuming the contrary, that they do not know about it?

A. No, I am not assuming that, either.

Q. Well, now, let us assume, then, that the dealers do not know about these varying mill nets, would that account possibly for their lack of objection?

A. Do you mean under the present system?

Q. Under the present system.

A. Of delivered prices?

Q. Yes.

A. I think that the mere fact that they find that they are being treated exactly the same at this point as their competing dealers, is the thing that they would consider.

Q. But don't forget that there is another point
44981 nearby where the delivered price was different and where the mill net was different.

A. But not a point competing with this point?

Q. Oh, yes. My original suggestion, two towns, important towns, 50 miles apart, competing for intervening business, still holds.

Mr. Bond: That was not in the original.

A. Now, you have the condition of different delivered prices in two different places?

Q. And different mill nets in different places from which dealers compete for intervening business.

A. Well, then, I should think that the dealers that have the better price would gradually drive out from the business those other dealers whose price is less favorable.

Q. And the other dealers would complain, would they not, if they knew that differing mill nets gave their competitors an advantage?

A. Well, if this were one market, or one point of delivery, they would, of course, complain. If these are two entirely separate points of delivery, and if again all the dealers in one point get the same delivered price, all the dealers in the other point get the same delivered price among themselves, then I think very likely dealers might, in the town where the higher price had to pay, might bring pressure
upon the mill to see if they could not get a lower
44982 price, to see if they could compete with these other dealers.

Q. And one form of pressure would be complaints that they were not being treated as well as their competitors; is that it?

A. Well, that would be quite different, I think, from the complaint that their competitors getting delivery at the very same point where discriminated against.

Here is a case of two different markets, two different delivery points, and with the opportunity of competing for business in between, and I do not think that the dealers in those two different points, if they are separate delivery points, would have the same ground for complaint because there was a different delivery price at some other point, that they would if different delivery prices were quoted to dealers at the same point.

Q. Suppose they found out that part of that difference in delivered prices was due to a difference in the mill nets, then wouldn't they complain that they were not being treated as well as competitors?

A. I still think they would direct their complaint to the delivered price.

Q. Well, there is also a difference in the delivered price, but part of the difference is due to the difference in mill net.

A. I think that what they would do would be to
44983 bring to the attention of the mill the fact that there are some intervening territory here in which they could compete better if they got a lower price.

Q. You mean if they got as low mill net as their competitor?

A. I don't think they would think so much of the mill net as the delivered price, because that is what affects their competitive position.

Q. If they knew the difference in mill net existed, wouldn't they direct their attention to that?

A. They might mention it, but I don't think that would be the basis for their complaint.

Q. Let us assume, Doctor, that the dealers are not aware of the difference in mill nets obtaining under the present system, do you think that lack of information on the part of the dealers has any bearing upon the necessity for buyers being well informed in order to have a condition approaching a perfect market?

A. Well, in the first place, I think I have testified that the cement market is not—does not represent perfect competition, but, rather, imperfect.

Q. Yes.

A. But with that change, assuming that I am considering the relation of this degree of knowledge to the state of competition in an imperfectly competitive market.

Q. Yes.

44984 A. I think with the knowledge that is required to permit of the operation of competition is primarily knowledge of what other buyers are paying and of what the various sellers—the price at which the various sellers are offering to sell.

Q. You think it is not important for the buyer to know whether or not his mill is taking different mill nets from him than from a competitive buyer?

A. I do not see how one mill could take different mill nets from two competitive buyers in the same place.

Q. Well, I didn't ask you to assume that, Doctor. I asked you to assume these two towns where they are in competition in between.

A. Oh, I understand.

No, I still think that what the buyer would think about—the kind of information that he would require, would be that as to what other buyers are paying and what the various sellers are offering to sell at.

Q. In other words, it is just because the buyers are concerned with being on an equality in difference of cost when they resell—when they are resellers, that underlies your explanation there, isn't it?

A. Well, your last question was to the relation of knowledge to the state of competition, and that means that in this state of competition buyers seek to buy at the lowest possible prices, and if they find any sellers selling

44985 at a lower price than another, they buy there, the result being that the price becomes identical in the particular market, and the knowledge required for them is, I have said, knowledge of the prices charged by the various sellers and the prices paid by the various buyers.

Trial Examiner Norwood: We will take five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. Wooden:

Q. Doctor, is it your idea that it is a matter of indifference to the buyers what the mill net is that they are paying?

A. Yes. In general, I do not think the buyers are interested in mill nets. They are interested in what they are paying for cement.

Q. Why, then, would they raise a storm of protest for paying the same figure at the mill under one system and not do it under the other?

Mr. Bond: Doesn't Your Honor think we have been over this?

Trial Examiner Norwood: I don't think he has asked this particular question.

Mr. Wooden: I supposed everybody understood that on cross-examination it is frequently necessary to approach things from different points of view.

44986 Trial Examiner Norwood: Go ahead.

The Witness: May I hear that question again?

(Question read.)

A. I did not say that they would raise a storm of protest when they paid—

Trial Examiner Norwood: Why would they protest at all?

The Witness: They would protest if they found that different customers of the mill were getting different prices at any one point.

By Mr. Wooden:

Q. At the mill.

A. At the mill or at the point of delivery.

Trial Examiner Norwood: That is what he said. Why would they make the difference?

The Witness: I don't see what the difference is.

Trial Examiner Norwood: Of them not protesting at delivered prices involving the same amounts that they would have to pay. Why would they protest at f.o.b. mill prices? They got the same result.

The Witness: I think I understand, Your Honor. Why would they protest when they went to the mill and found a different f.o.b. price to different customers, but not protest when they found identical delivered prices, even though this might involve different mill nets.

44987 Mr. Wooden: No.

The Witness: That is what I understood.

Trial Examiner Norwood: The mill nets were the same as the f.o.b. mill.

Mr. Wooden: Now answer.

The Witness: Can I hear the question as it has now been phrased?

Trial Examiner Norwood: Don't you understand the situation without the question up to this time?

The Witness: No. It seems to me there have been two or three questions asked by Your Honor and Counsel and additions made to them, and I do not know exactly what is the question before me now.

By Mr. Wooden:

Q. Well, I will try again, Doctor.

Why should dealers protest to the mill if they found out they were paying different prices f.o.b. mill, and not protest to the mill—to the same mill, let us say—when they are paying the same amount of money to the mill in the form of varying mill nets?

A. Well, a dealer is not going to protest when he goes to the mill and buys f.o.b. and finds that he is charged the same price as everybody else.

Q. I did not ask you that.

A. You asked if he did not protest in one case 44988 and did in another.

Q. But—

Mr. Bond: Let him answer.

Mr. Wooden: I posed different f.o.b. mill prices. Now, he is trying to make them the same and answer on that basis.

The Witness: I beg your pardon, Mr. Wooden, if I misunderstood. He does protest, then, when he goes to the mill and finds that he and other buyers are charged different prices; he does not protest when—correct me if I still do not understand you—he does not protest when he finds that he and other buyers in a certain town pay the same delivered price, even though that may involve different mill nets.

By Mr. Wooden:

Q. And the same mill nets that are involved if he were buying f.o.b. mill.

A. Yes.

Q. The same amount of money per barrel. In the one case he protests and in another he does not.

Mr. Leisure: Just a moment.

I want to state an objection on the record. This form has been going on here for about an hour, of one party

addressing an argument to the witness, instead of a question, and it is not proper procedure. Unless Mr.
44989 Wooden can put questions which can be answered, I object to the proceeding going on in that way.

Trial Examiner Norwood: Your protest is well taken. I am trying to get this witness to make direct answers to these questions. I had a right to ask those question, and he has not made direct answers to me.

Now, the question is coming up here about whether or not this witness can get off at a reasonable time, and I will instruct him to make direct answers to these questions as well as he can to the end that this examination may be shortened.

Mr. Porter: Your Honor, in connection with that direction, when a question is put in such a way—

Trial Examiner Norwood: Now, I understand that.

Mr. Porter: —that he can't answer—

Trial Examiner Norwood: I understand all that.

Now, read the question.

(Question read as follows):

"Why should dealers protest to the mill if they found out they were paying different prices f.o.b. mill, and not protest to the mill to the same mill, let us say—when they are paying the same amount of money to the mill in the form of varying mill nets?")

A. Does that mean that the mill nets under a delivered price basis are the same as the f.o.b. mill price
44990 that they would pay?

By Mr. Wooden:

Q. I said clearly paid the same amount in the form of mill nets that they paid in the form of f.o.b. mill prices.

A. Well, I still want to kow whether you have an optional basis or whether you say it is historical. You say they all paid. Does that mean that formerly they paid f.o.b. mill and now they are paying on a delivered-price basis? I am, frankly, trying to get at the meaning of the question.

Q. I suppose you understand, Doctor, that under the existing system they are paying varying mill nets to the same mill.

A. If there are different places.

Q. Oh, yes, surely.

A. Yes.

Well, my answer, I think, I can make very clear. I have

already stated, I believe, on the record that they complain when they find they and other buyers are being charged different mill prices under an f.o.b. mill system. They do not complain if they find that the delivered prices are uniform in a particular market, regardless of the mill nets; because, as I have said, I do not think the buyers are interested in the mill nets.

Q. But they would be much interested in paying the same amounts of money in the form of f.o.b. mill. They would be much interested in that, wouldn't they?

44991 A. I just repeat: If they went and bought on an f.o.b. mill basis and found the prices were different—

Trial Examiner Norwood: What do you suppose the attitude of those dealers would be under the different circumstances?

The Witness: Well, when a buyer goes to a market and buys something, what he thinks of is the price he has to pay for it delivered at that market. He is interested, if he is a dealer in competition with other dealers, in whether his competitors pay the same price or not. As a consumer or a dealer he is always interested in getting as low a price as he can.

Trial Examiner Norwood: Do you think he would make a distinction between the different methods if he found out he was paying the same delivered price at his place of business? Would he make a distinction as to whether it was a varying mill net or a varying f.o.b. mill price?

The Witness: I don't think he would care anything about the mill nets. What he is interested in is what he is paying.

Trial Examiner Norwood: Yes.

The Witness: Of course, every buyer wants to pay as low a price as he can.

Trial Examiner Norwood: Would the question of arriving at the price make any difference if it cost the

44992 same under both systems at his place of business?

The Witness: If under some other system he found that at the mill buyers were getting—

Trial Examiner Norwood: No. Leave that out. Regardless of the price at the mill, regardless of whether you call it mill net or f.o.b., if he found that under the two systems he got the same delivered cost at his place of business, do you think there would be any difference in his attitude toward those two methods?

The Witness: Well, you see, Your Honor—

Trial Examiner Norwood: Wait a minute. Answer that "yes" or "no." Would there be any difference or would there not?

The Witness: Well, can't I make it clear, that your question assumes that the other method—you say, "these two methods."

Trial Examiner Norwood: Yes.

The Witness: The other method is the f.o.b. mill basis.

Trial Examiner Norwood: Yes. Don't you know perfectly well the two methods I am referring to?

The Witness: I want to be perfectly sure.

Now, I have to come back to my same answer; that if he found different f.o.b. mill prices charged to different buyers, he would not like it.

44993 Trial Examiner Norwood: Regardless of that. If he found he paid the same money per barrel for his cement laid down at his place of business, would it make any difference to him as between the two methods?

The Witness: I think it would, if I understand your question.

Trial Examiner Norwood: Yes.

Mr. Brick: He answered that six times, Judge.

Trial Examiner Norwood: He has not answered it six times that way.

Mr. Brick: Well, I don't think there is any reason for badgering a witness and putting six questions to him just to make him change his answer.

Trial Examiner Norwood: I am not badgering. Your remarks are not well taken.

Mr. Brick: Well, I don't like the gavel, either, if Your Honor please. Every time Counsel for Respondents has spoken in the last hour or so Your Honor has constantly tapped the gavel. That is—

Trial Examiner Norwood: I ask the Counsel to be seated.

Proceed with the examination.

By Mr. Wooden:

Q. Doctor, wouldn't it make some difference in your mind if you were to assume that under the f.o.b. mill system the dealers or the buyers would all know
44994 about the differences in the mill nets but under the present system they do not know?

A. Under the f.o.b. mill system—I do not understand what you mean by the "mill net." That is the same as the price, isn't it?

Q. The same as the f.o.b. mill price, of course.

A. Yes. Well, I think that—I am afraid I will have to repeat what I said, that—

Q. Answer my question.

The Witness: Will you read the question?

(Question read.)

A. I don't think that is the important thing. Obviously, under the f.o.b. mill system—

Q. I did not ask you—

A. —the buyers know what the f.o.b. prices are. And you have said that is what you mean by the mill nets. Under the other system they may or may not know what the mill nets are.

Q. Let us assume they do not know.

A. I have already said I do not think they are interested in the mill nets.

Q. You say this lack of knowledge, assumed lack of knowledge, would not in your thinking account for the difference of protesting in one case and not protesting in the other?

A. No. As I say again, I do not think that buyers are interested in the mill nets; they are interested in the 44995 price they have to pay.

Q. But we assumed the delivered cost laid down was the same.

A. Even so.

Q. You can't tell us why they protest about an f.o.b. mill price that varied as between buyers and would not protest about a mill net price that varied even though the amount of money involved was exactly the same.

A. Is that a question?

Q. That is a question.

A. I think I have already answered it, Mr. Wooden.

Q. All right. If you think you have, I won't press any further.

Now, you testified, Doctor, that in your opinion the basing-point system could not be abandoned without collusion. Do you remember that?

A. Yes—or governmental authority. I included both.

Q. All right.

Do you mean to say that a powerful chain company that has been operating as a base mill company could not com-

pel its competitors to follow its lead if it were to adopt a system of selling f.o.b. mill?

A. If that is a factual question, I hesitate to answer. If it means on the basis of the hypotheses laid before me, I would think it very unlikely that any competitor, after going out—after changing from the present system
44996 to an f.o.b. mill basis, could compel its competitors to follow it.

Q. You do not think that several of the basing-point mills represented in chain companies could force the installation of a system of f.o.b. mill selling?

A. May I ask if these several mills are now independent mills, or do they come as one unit?

Q. I am referring to chain companies each with several mills.

A. Each chain regarded as one company?

Q. Oh, yes.

A. Yes. I still think, on the basis of such knowledge as I have from the hypotheses stated to me, action by one of those chain mill organizations in going over to the f.o.b. mill basis would not compel or force others to follow.

Q. And yet haven't you testified on the asuumption in one of the questions that even a small mill could force a price reduction on a larger mill?

A. I do not think it is necessary to refer to the record. I said even a small mill could initiate a price decrease.

Q. But a big mill can't initiate a change in the system?

A. That is not quite what you asked me.

Q. You would say that the forces of competition could not compel the abandonment of the present system?

A. Yes, I think the forces of competition would prevent its abandonment.

Q. Suppose you were to assume that in 1931 and 1932, Doctor, that the system was abandoned temporarily
44997 in certain sections because of the stress of competition, then would you still say that competition could not force its abandonment?

A. I would not know enough about the circumstances in that case, as a matter of fact, to know what might have caused that action.

Q. Well, just merely assume that during 1931 and 1932 there was a temporary abandonment in certain sections of the basing-point system, and they went to, for certain purposes and on certain sales, f.o.b. mill selling. Now, how do you explain that?

A. In the first place, that is not a general change of the system for the whole industry. In the second place, you have not given me enough of the multitude of facts, which I suppose are present, to enable me to explain it as a factual matter.

Q. Well, you are aware as an economist, are you not, of the general conditions affecting business in 1931 and 1932?

A. In a general way, yes.

Q. It was one of the most strenuous periods, was it not, of competition that industry generally had to face in many years?

A. I hesitate to say that.

44998 A. I hesitate to subscribe to that precise characterization.

45002 Q. Now, Doctor, you recall Mr. Bond put to you the same hypothetical question which I put to Dr. Fetter and other economists.

A. Yes.

Q. And one of my inquiries of Dr. Fetter was whether the assumed facts stated corresponded to any competitive method with which he had become familiar in the course of his studies and experience.

Now, when you answered the question you treated that as being equivalent to asking whether it was consistent with competition. Now, I want an answer from you to the question which Mr. Bond put to you when he asked you if this system corresponded to any competitive method with which you have become familiar in the course of your studies and experience.

The Witness: May I see the record on that?

(Mr. Bond hands record to the witness.)

A. I apologize, Mr. Wooden, if I must still seem to not quite understand the meaning of the word "correspond."

"Correspond," in my mind, implies a great many possible relationships. And when we ask whether a

45003 series of hypothetical statements corresponds to a method of pricing, it seems to me that the question is somewhat vaguely worded, and I prefer to paraphrase it in the way in which it seems to me clear.

Do you wish to insist that I do my best to answer?

Q. I want you to answer in the terms in which it was put, and do not forget that it includes more than "correspond," but any competitive method with which you have

become familiar in the course of your studies and experience.

A. Now, then, I will answer it "Yes," it does correspond.

Q. To what competitive methods does it correspond that you have become familiar with in the course of your studies and experience?

A. It corresponds to the competitive methods used in very many industries, where delivered prices are made, some in particular places by sellers who are differently located with respect to that place, and who, therefore, have to absorb different amounts of freight. I think that is a very common competitive method.

Q. And you assume that those methods are all competitive in those industries, although you said yesterday that you had not made a firsthand study?

A. I do not assume that all methods in all industries are competitive, but I—

Q. But those particular methods that you refer to.

45004 A. (Continuing.) —but I find from my knowledge that there does prevail in very many industries in the United States a competitive method of selling which involves absorption of different amounts of freight in order to deliver goods at a particular price from different producing points at the same delivered price.

Q. You are assuming that in those industries without having made any study that the method is competitive and that no collusion is involved; is that correct?

A. I have made sufficient study to know that the methods are competitive.

Q. And no collusion?

A. No; I did not say there was no collusion there.

Q. But didn't you use the term "competitive" as precluding or excluding the concept of collusion?

A. I think I have already testified that a competitive system might be accompanied by certain acts of collusion and it still would be characterized as competition.

Q. A thing can be competitive when it is not competitive.

A. That is not what I meant; no.

Q. Yet you say it is accompanied by collusion, and it is still competitive.

A. Suppose the factories making any product you

please should come together and enter into an agree-
45005 ment to close at certain hours, to open at certain hours, to pay certain wages, and various other points upon which they might enter into an agreement, which might be called collusion; still I think that would not prevent their general method of selling being competitive.

Q. You do not know whether these pricing methods, similar pricing methods used in other industries on which you relied for your answer are accompanied by collusion or not, do you?

A. I know that they are competitive.

Q. But you do not know whether they are accompanied by collusion?

A. They may or may not be accompanied by some degree of collusion.

Q. As to price policy. I want to know whether they are accompanied by a degree of collusion on price policy.

A. All I meant to say in answering this question was that this corresponded with some competitive selling system with which I was familiar.

Q. And you assumed they were competitive and did not know whether they were accompanied by collusion or not?

A. I know that they are competitive.

Q. And you do not know whether they are accompanied by collusion?

A. I know that they are not accompanied by enough collusion to deny their competitive character.

45006 Q. How do you know that, Doctor, without having studied them?

A. I studied them enough for that.

Q. Didn't you testify yesterday that you had not made any firsthand investigation into these other basing-point industries?

A. I was trying to be quite frank and not exaggerate my qualifications in answering that question. But I did testify that I had made a study of the general facts, history, and principles of economics, which involve enough information for me to be sure that there are industries in the United States selling on the basing-point system which are competitive and not accompanied by enough collusion to prevent their being properly characterized as competitive.

Q. You, then, had some concept of when a thing was sufficiently collusive or non-collusive to found your direct

testimony when you answered many questions that this system was not collusive?

A. I wonder if you could indicate which questions you are referring to.

Q. Well, I merely refer, Doctor, to your testimony that you could not answer questions about such things without having a precise and definite meaning attached to the word "collusion." Now you are bringing in the elements of whether it is enough collusion to prevent its being
45007 competitive, and you say that you think these other basing-point industries do not have enough collusion in them to render them non-competitive; is that right?

A. The others which I said correspond to this one, I am sure that there are some of those which do not have enough collusion to make them non-competitive.

Q. Which ones do you have in mind?

A. I have in mind a very large number of industries which sell at the same price to buyers in the same position.

By Mr. Wooden:

Q. Name them.

A. The agricultural industries generally are competitive. They are not pertinent here, because most of them do not apply the basing-point method.

Q. And no—

Mr. Bond: Let him finish, please.

45008 A. The sale of manufacturers' hardware; many other forms of hardware. I think most of the hardware industries are competitive industries.

Q. No collusion—

Mr. Bond. Let him finish, please.

A. The sale of boots and shoes is competitive. I could go down the list—

Q. Is there a basing point—

Mr. Bond: I object to the interruptions.

Trial Examiner Norwood: Let the witness finish his answer.

A. In all of these industries the same price prevails in the same market for the same commodity; or, if there is a slight difference in the commodity, if you have imperfect competition, and the price corresponds—and in every case where the producer delivers his hardware, brass goods, or whatever it is, into a certain market, and sells at the price which prevails in that market, he has had to assume the freight to bring it in.

By Mr. Wooden:

Q. What basing-point industries did you have in mind when you made that statement?

A. I think that industries generally are properly described as basing-point industries in the—

Q. All—

Mr. Bond: Let him finish.

45009 A. —in the fundamentals of this definition. When they meet the price of competitors, or all sell at the same price in the same market, the different ones assuming different amounts of freight to get to that place,—it was that situation which I testified in my mind corresponded to the descriptions in the hypothetical question.

Q. And you also testified a few minutes ago that the basing-point method of selling used in other industries was competitive. Now, I want to know what industries using the basing-point method of selling, in your opinion, are competitive.

A. The industries I have been naming.

Q. Does the boot and shoe industry use a basing-point method?

A. Yes. The shoes come into a particular market, come from different points, and they bear different amounts of freight.

Q. Do you know what the basing points are?

A. The basing points would be the different points of manufacture.

Q. Do you know that they are not sold f. o. b. mill?

A. Well, I am talking about the retail.

Q. I am talking about manufacturing industries.

Name the manufacturing industries whose basing-point systems are, in your opinion, competitive.

A. The question asked me did not limit my answer to manufacturing industries; it said any competitive pricing system.

Mr. Bond: If Your Honor please, the original
45010 question did not have anything to do with the basing-point system for comparison. The original question put to the witness, which Mr. Wooden put to Dr. Fetter, was to compare any other competitive pricing system.

Trial Examiner Norwood: That is true.

Mr. Bond: The witness answered that. He did not use the words "basing point." He compared it to delivered price systems.

Now, Mr. Wooden is going, you see, far beyond the scope of that on his cross. He is going now into an investigation of other basing-point systems. That has not been involved in direct, and it is not a proper thing to go into on cross.

Trial Examiner Norwood: Well, he may ask him—

Mr. Bond: It takes time, and it will force us to go into it on redirect.

Trial Examiner Norwood: Don't you think he may ask him about any systems which he has compared this assumed situation to, regardless of whether it is basing point or not?

Mr. Bond: He did not say he had compared it to basing point; he compared it to delivered price methods. Now he is trying to pin him down to basing point and explore other basing-point industries.

Mr. Wooden: I am not investigating other indus-
45011 tries; I am investigating this witness' statements when he gave certain testimony.

Trial Examiner Norwood: Read the question.

Mr. Wooden: I am entitled to that.

Trial Examiner Norwood: Read the question.

(Question read as follows:

"Name the manufacturing industries whose basing-point systems are, in your opinion, competitive?")

Trial Examiner Norwood: He may ask him to name them.

Mr. Bond: Then, he is making him his witness, Your Honor.

Mr. Porter: If you allow him to go ahead, Your Honor, we will have to go into the whole field of competitive methods in every industry he has mentioned.

Mr. Bond: We will have to go into it with other experts.

Trial Examiner Norwood: You will confine your answers—

Mr. Wooden: I am not making him my witness.

Trial Examiner Norwood: You will confine your answers to those methods which were involved in your answer to this previous question.

The Witness: My answer on direct examination was not limited to manufacturing industries nor to basing-
45012 point industries, but I found a correspondence between the conditions described in these hypotheses and many other industries where the delivered-price method is used.

By Mr. Wooden:

Q. You did not mean, then, to refer to any basing-point methods in other industries—

A. Well—

Q. —when you said that this one in this industry corresponded to a competitive method with which you were familiar?

A. I did not undertake to distinguish between basing point—

Q. I am asking you now—

A. —industries. I do not have to answer the question that I did on direct.

Mr. Wooden: Your Honor, that last question is as clear as can be, and he can answer it.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Did you or did you not?

Mr. Bond: Read his answer.

(Answer read.)

Mr. Wooden: He is not answering me.

Trial Examiner Norwood: Read the question again.

(Question again read.)

Trial Examiner Norwood: Please let us know whether you included any basing-point systems in that answer.

45913 The Witness: Well, I answered that question with reference to industries which I knew were operating under a competitive system, regardless of—

Trial Examiner Norwood: Among those were any operating on the basing-point system?

The Witness: I did not stop to think whether they were or were not, Your Honor.

Trial Examiner Norwood: Well, can't you answer that? Stop and think and answer now.

The Witness: That makes me a factual witness, I think, whether some of these industries—

Trial Examiner Norwood: You do not know whether you included the basing-point systems in your considerations in answering the other questions, or not; is that correct?

The Witness: I did not stop to think of whether these industries were basing-point industries or not, because I did not think that was essential.

Trial Examiner Norwood: You can't tell us whether you considered them or not?

The Witness: I considered industries which I thought were competitive and corresponded to the hypotheses here.

Trial Examiner Norwood: You can't tell us now whether any of those were industries operating on the basing-point system?

Mr. Leisure: That is a factual question, if Your
45014 Honor please.

Trial Examiner Norwood: No. No.

The Witness: I would not undertake to tell you that, Your Honor, because I am not a factual witness.

Trial Examiner Norwood: I am speaking of what you considered in answering that previous question.

The Witness: I considered industries which sell on a delivered-price basis.

Trial Examiner Norwood: And did or did not consider any industries operating on the basing-point system?

The Witness: I did not enter into that in my consideration.

Trial Examiner Norwood: Yes.

Proceed.

By Mr. Wooden:

Q. Well, I am now asking you your present state of mind. When you say that this method in this industry corresponds to competitive methods that you are familiar with in other industries, do you mean to include or to exclude basing-point systems in other industries?

Mr. Bond. I object. It is the same question. He explained fully what was in his mind when he made that statement.

Trial Examiner Norwood: Well, he wants to know now if he included that. I think he has a right to know that.

45015 Mr. Bond: He is asking for the state of mind of the Professor at this moment.

Trial Examiner Norwood: Yes, and that is what cross-examination amounts to.

Objection overruled.

A. Well so far as this particular question goes, and its answer, my mind, as far as I can see, is the same as it was when I answered the question on direct.

By Mr. Wooden:

Q. Can't you answer that question "yes" or "no," Doctor?

The Witness: Read the question.

(Question read.)

A. I do not mean either to include or exclude, because I do not think the question of their being basing-point industries is essential to my answer.

By Mr. Wooden:

Q. You testified, Doctor, on page 44647, that this method of marketing employed in cement has a wholesome effect upon the national economy. Is that correct?

A. It is not the language I used in my answer.

Q. Isn't that the substance of it?

A. I think I would rather stand on the answer in the record.

Trial Examiner Norwood: Look at it.

The Witness: Do you want me to read the answer?

Trial Examiner Norwood: Look at it. Consult the record and answer the question.

The Witness: I have consulted the record, and I do not wish to change the answer which I there made.

Trial Examiner Norwood: What was that?

The Witness (Reading): "It would appear to me that this method of marketing is one in harmony with competition; that it, therefore, would tend to promote the production and marketing of cement under a condition which would in the long run tend to produce cement and deliver it somewhere near its cost of production."

Then I added that I am not sure whether something more is required.

Trial Examiner Norwood: All right.

Proceed.

By Mr. Wooden:

Q. Doctor, what I am getting at is: Are there any other effects on the national economy of this method other than the ones—the one you stated there, to the effect that it was in harmony with competition, and, therefore, tended to promote production and marketing which in the long run would produce cement and deliver it somewhere near its cost of production?

A. I was not able to think of other effects which might have been called for by this question.

And now, while one might say that any great industry has all sorts of effects upon the national economy,
45017 I did not have in mind the enumeration of the particular effects other than the one I stated, which seemed to be the one that was of importance.

Q. In other words, you assumed it was helpful to the national economy because you thought it was competitive; is that correct?

A. I did not say so.

Q. Well, isn't that the meaning of your testimony, Doctor?

A. Again, Your Honor, I would like to stand on the record of my answer.

Q. You did not have any information, did you, as to the cost of producing cement and whether the price had a relation somewhere near the cost of production? You did not have any factual knowledge, did you?

A. I was answering this question on the basis of general economic principles, of which I had knowledge.

Q. General economic principles that competition produces those results?

A. Yes.

Q. Now, Doctor, referring to your testimony on page 44649, where you said you thought the method of marketing would have a certain tendency toward rigidity of price, on which you elucidated further on the following day, I believe. In that same connection you testified, I believe, concerning the effect of the marketing method employed upon location of mills, and said that this method would be a disadvantage to a poorly located mill, poorly
45018 located—that is what I better ask—poorly located with regard to markets or with regard to raw materials? I want to get that straight.

A. On the matter of a disadvantage of location with regard to markets, the present method is less helpful than the other.

Q. In other words, more disadvantage to a concern well located or poorly located with regard to markets?

A. What I meant to say was the present method does not put an umbrella over a mill poorly located with respect to markets.

Q. But how about one located poorly with respect to raw materials?

A. That might have a tendency the other way.

Q. Well, now, you there testify that this method permits other competitors to come into a mill poorly located with regard to markets. Is that what you meant there, in lines 13 and 14?

A. My copy is not numbered as to line.

This method permits other competitors to come into this mill's territory by freight absorption.

Q. What mill's territory? One poorly located with regard to markets?

A. Yes, with respect to markets.

Q. In other words, that gives the poorly located mill with regard to raw materials entre into the markets of the mill that is well located with regard to markets?

45019 A. Yes. It can go into—it can go into that market on a freight-absorbing basis, but other mills can go into its territory on a freight-absorbing basis.

Q. The mills, then, with the advantage of location on the element of market also are permitted under this method to go into the territory of the mills poorly located as to markets on a freight-absorption basis?

A. Yes. Any mill on the freight-absorption basis can go into the territory of another mill.

Q. Will you explain how the present method is a disadvantage to the mills poorly located with respect to markets?

A. It is a disadvantage in that these other mills can go into the market and undersell this mill, or compel this mill to take a very large degree of freight absorption, and also at the same time can penetrate into this mill's own territory by freight absorption.

Q. And under the present method that disadvantage is canceled?

A. It is the present method that I am describing.

Q. And under it that disadvantage is canceled, isn't it?

A. Well, the other mills are well located with respect to markets. This mill is badly located, and it has to absorb a large degree of freight absorption to get in.

Q. But it does get in, and at the same delivered price. Isn't, therefore, its disadvantage canceled in that market?

A. Well, not as compared with another method of selling.

45020 Trial Examiner Norwood: Its advantage would be minimized, wouldn't it?

Mr. Wooden: Disadvantage, you mean.

Trial Examiner Norwood: Yes.

Mr. Wooden: Yes.

Trial Examiner Norwood: That is your contention.

Mr. Wooden: Well, I think that probably is a preferable form of question to mine. I was assuming cancellation from the fact that they made the same delivered price.

By Mr. Wooden:

Q. Doctor, you will agree, will you not, that it is the composite advantage of location or disadvantage of location, including both the element of markets and raw materials, that is the elementary important factor?

A. Yes, I would agree with that.

Q. In your opinion as an economist, is there any satisfactory test of whether mills are well located except the test of competition?

A. Well, the test, I should say, was rather the profitableness of the business of the mill, except as a factual expert might point out the technical condition as to location with respect to markets or raw materials, with which I am not familiar.

Q. Well, different people establishing mills will 45021 arrive at different judgments as to whether the mill is well located, where they put it, or not, will they not?

A. Yes.

Q. Is there any way of finding out whether their judgment is correct or not except by having them compete with other mills differently located?

A. Well, answering as an economist, I would say the test would be to compare their profits with the profits of other mills differently located. But, then, taking allowance for all sorts of other circumstances which would enter into the amount of profits, I would think that it would be very difficult to test in a practical way the total effect of the location, along with other causes. But that is getting me into technical matters about which I do not pretend to be an authority.

Q. Can you suggest any other method of determining whether mills are well located except their competition with other mills differently located?

A. No, I am not prepared to suggest a test for the relative advantage of location of mills.

Q. Now, Doctor, on page 44650, you testified that you could not see anything in the marketing method employed

in this industry as an influence tending to produce or intensify economic depression.

A. Yes. I testified that I could not see any con-
45022 nection between this particular marketing system and influences tending to promote or intensify economic depression.

Q. Do you recognize as an economist that there is any connection between economic depression and the existence of monopolistic or collusive combinations?

A. The whole theory of business cycle is a very complicated and involved matter.

Q. I don't—

Mr. Bond: Let him finish.

A. I am not prepared to say that economists have arrived at a definite agreement as to just the relation between monopoly, collusion, and the business cycle, or, as you say, and the condition of depression.

Q. I ask you if you recognize any connection between the two things.

A. Well, I include myself among the other economists.

Q. You mean you do not have any opinion, Doctor?

A. There may be some connection, but I am not prepared to say what it is, or formulate it.

Q. Don't you recognize as an economist that there is a causal relation between combinations which maintain rigid prices while the rest of the economy is not able to maintain rigid prices for its produce or for its labor?

Mr. Bond: I object, if Your Honor please. That is a factual question.

45023 Trial Examiner Norwood: He is asking for an economic opinion there. I think that is clear.

Objection overruled.

Mr. Bond: About industries that maintain rigid prices. You see, there is the factual knowledge.

Trial Examiner Norwood: Overruled.

Mr. Wooden: I did not say "industries"; I said "combinations."

Trial Examiner Norwood: Overruled.

Answer the question.

The Witness: Could I hear the question again?

Trial Examiner Norwood: Read it.

(Question read.)

A. I would not be able to recognize an economic principle phrased in just that sort of language.

By Mr. Wooden:

Q. Well—

A. There is a relation between the relative rigidity of prices in certain industries and other industries.

I am harking back to my introductory statement of all of this theory of business cycle. I think it is a field in which we economists have not gotten very far toward a precise and very definite formulation of principles. And so when I answer you will understand that I am doing my best to paraphrase what I think would be a generally ac-
45024 cepted point toward which economists are coming—well, "generally accepted" is too strong a phrase—a line of theory which is held by economists, let us say.

There is one theory that when the prices in one industry become rigid and those in another industry—and those in other industries less rigid, you have a certain disturbing influence.

If I should desire to elaborate on that, we have the theory held by some that the fluctuations of the business cycle come from lack of harmonious adjustment between prices all along the line, and if prices are rigid in one line, that forces the element of elasticity on the other lines, and so causes disturbances which may lead to a change in the course of business, and so possibly a crisis.

I submit that that is all very general and perhaps vague, and I can't say that it represents a line of agreement on the part of economists generally, or one which I myself wish to put forth as my own reasoned stand on the subject. I hope it is responsive to the question.

Q. You do not know whether you subscribe to it or not?

A. No. I have a feeling that that is a reasonable hypothesis, but it is not an established principle of economics, I should say.

Q. Isn't one element in that theory that the rigid prices in those industries are maintained by reducing pro-
45025 duction and creating unemployment?

A. No. That, I think, is not the purport of the principle.

Q. Isn't that a factor which you take into account?

A. Well, reduced production and reduced employment are, of course, factors to be taken into account in considering the business cycle.

Q. No. Isn't it commonly thought of in that theory that the rigidity of price is maintained by reducing production?

A. Well, if you will let me put that in my own language, it may be true that an industry which has a policy of price reduction—

Q. Price rigidity.

A. —price rigidity, would in time, when the prices generally were falling, find that a curtailment of production would be indicated in order not to pile up unsold inventories in connection with the failure of its selling price to come down. Of course, that is one side of the picture. There is the other side of rigidity, when prices do not go up. But I want to be understood as being very cautious, indeed, about announcing generalizations of this sort without a great deal of qualification and bringing in of other considerations.

Q. Well, doesn't the reduction in production in order to maintain price rigidity,—isn't it itself a cause of depression?

A. I do not think so, Mr. Wooden.

45027 Q. Would you agree with this statement, that the declining activity in the durable goods industries is itself a cause of depression?

A. It is a proper element in the general picture of business cycle.

By Mr. Wooden:

Q. Will you agree with the statement or not?

A. I can't say that it is itself the cause except as it is connected with other forces of cause and effect. It is an influence.

Trial Examiner Norwood: Is it invariably attended by it?

The Witness: I would hesitate to say it is invariably attended by it.

By Mr. Wooden:

Q. Would you class cement as a durable goods industry?

45028 A. I think that is a question for—

Q. I think it is for an economist. I am talking about durable goods industries.

A. By a durable goods industry we mean machinery, machine tools, things of that sort. I am a little doubtful—I do not think we would classify cement as a durable goods industry. Cement is a raw material that enters into the

production of various structures. Now, I think it would not be generally classified as a durable goods.

Q. You would not put any construction material in the class of durable goods industries?

A. Well, that is a very broad question. I—

Q. Your answer led to it.

A. Elevators, shafting, that sort of thing, which you might say enters into the construction of buildings, would be considered durable goods.

Q. In other words, steel going into a building for such purposes would be durable goods?

A. Well, you see, you are asking me about a term which I do not think is so precisely defined in economic theory, the only basis upon which I would be competent to discuss it. I can run down the list and classify every article you could name. My own understanding would be that an article which went into—as a component part, into another structure, and then lost its identity, would not usually be regarded as a durable good. The struc-
45029 ture into which it entered might or might not. But I disclaim any precision in that classification.

45031 Q. Now, on page 44650, lines 3 to 9, you were testifying to the effect that a non-base mill was competing when it sold at each delivered point at the same price they found other companies quoting there.

A. That is right.

Q. You would still say that even though what it did was to take the base price of some base mill and add the freight to the destination and then quote that instead of waiting to find out what the other mills were quoting at the destination?

A. Well, that might be one way it would find out what the destination price was there.

Q. You mean, acting on the assumption that that is what it would be?

A. If they had information to lead them to know that a certain mill was the base mill, and that the going price in this particular place was determined by adding freight to that mill's base, they might do that, and so find what was the price, but the question implies that they would not have to do that because they would know that there was a delivered price there already.

Q. Well, suppose we assume that at many destinations non-base mills do not know just what delivered price is

being quoted but arrive at their delivered price by
45032 taking the base and adding the freight to it without finding out what the delivered price is there.

A. They must have some way of knowing what mill is the base for that destination.

Q. Yes.

A. If they know that and add the freight and arrive at a price, they might bid that price until they found some other mill bidding a different price.

Q. Do you still say they are competing when they do that at those destinations?

A. Oh, yes.

Q. Competing without actually knowing what the actual going price is at that destination?

A. Well, I think they would be sure to find out very quickly.

Q. If it were not as they assumed?

A. And in any case—

Q. When a mill does quote at numerous destinations not by ascertaining the going delivered price at those destinations, but by taking a base mill's base price and adding the freight from the basing point to a large number of destinations, where do the forces of competition converge in that situation?

A. They converge at the point of delivery of the cement in the market.

Q. Where in that situation is the opportunity for buyers at those destinations to bargain with the seller
45033 as to what the delivered price shall be?

A. Well, buyers in those destinations are in contact through salesmen with two or more sellers; they get quotations from each of the sellers; they compare those, they take whatever action is to their interest, and by buying only from the seller who has the lowest price, then the process of demand and supply determine the price at that destination.

Q. But don't you assume that under the marketing method here that the delivered price is the same? You talk about buying from the mill with the lowest delivered price. They are all alike, which one would it be?

A. Well, it is just because all mills would buy of the mill with the lowered price, if there were a lowered price, that we got the common uniform price.

Mr. Potter: Pardon me. You said all mills would buy.

The Witness: All dealers or customers? Yes. Thank you.

I have already stated the general principle that in a given market the price of a given article where there is competition and knowledge among buyers and an alternative of two or more sellers from which to buy is found to be uniform, the same.

By Mr. Wooden:

Q. Would you think that a destination where
45034 there was only one buyer would correspond to your idea of a competitive market at that place?

A. There is some question, I know, among economists as to whether or not you can properly define as a market place where there is only one buyer. If that buyer were a dealer who is a distributor selling to others, I would say that was still a market.

Q. Why? He is still only one buyer, isn't he?

A. I recognize that there is difference of opinion as to the use of that term. I would not quarrel with any other economist who said he thought you would have to have two or more buyers to make a market.

Q. You would not quarrel with one who took that position?

A. No. I think our ideas would be just the same. It would be only a matter of difference in terminology.

Q. In that respect the market at that destination would fall short of what economists postulate as one of the modern elements of a true market?

A. Well, you have—I define a market as a—

Q. Can't you answer that question?

A. Well, I will have to answer it with respect to the definition of "market" which I, myself, give.

Q. You can explain it after your answer, but don't explain it instead of answering.

Trial Examiner Norwood: Read the question.

45035 (Question read.)

Trial Examiner Norwood: Is that true or not?

The Witness: Is it not true as of those economists who define "market" that way.

Q. Well, do you define a true market as one in which there is only one buyer?

A. I said that I would think that in the place where there was only one buyer who was himself a seller, that

you might define that as a market. It is purely an arbitrary matter of terminology. It does not make any difference as to the fundamental concept what label you use in that particular case.

Q. What difference does it make if he is reselling—if he is the only buyer from the manufacturers' standpoint, and the standpoint of the wholesale price?

A. It does not make a difference as to the standpoint of the wholesale price. The market is the place where the forces of demand and supply come together. Now, if this place where there is one buyer is taken into consideration by the sellers in determining what prices they will offer at that place, it becomes part of the forces which operate to determine price. That is why I think it is useful to call it a market.

Q. I grant you it is one of those things, but doesn't it fall short in that respect of what economists postulate as one of the important elements as a true market?

45036 A. Some economists would say it fell short.

Q. And you think it does not fall short?

A. I think it is properly defined as a market.

Q. And it does not fall short of your conception of a true market?

A. Of a place where the forces of demand and supply come together to determine the term "price."

45038 Q. Well, at any rate, won't you agree that the forces of competition from the buyer's standpoint are very decidedly lessened when there is only one buyer at a given destination?

A. Well, where there is only one buyer at a given destination there is not competition between buyers at that destination. I think that would be true, but you can't say that there is not—that the forces of competition are not operating here as long as different sellers are competing for the custom of a buyer.

45040 Trial Examiner Norwood: Well, he has answered it.

By Mr. Wooden:

Q. Suppose a buyer wants to buy at the mill and does not tell the mill where he wants to take the cement, where he wants to use it; where is the market?

A. Well, could I ask if he actually does buy at the mill f.o.b.?

Q. No, I am asking if he wants to buy at the mill and wants to make the mill his market, and without stating where he is going to use it, where is the market there?

A. I could not answer that question without
45041 knowing where the cement is to be delivered.

Q. If the mill sold him f.o.b. mill, then you agree the market would be at the mill?

A. Would be at the mill.

45045 Q. And you will agree, will you not, Doctor, that it is only to the extent that that leadership is followed that there is this identity of delivered price at the destinations controlled by that base mill's base price?

A. Well, I would not put it that way. I would say that in any market where goods are delivered to buyers, well informed, who have a choice between sellers, there is bound to be identity of price with the—

Q. You don't think a price leadership under the
45046 conditions we have talked about would have that effect?

A. Well, price leadership is part of the picture.

Q. It is the same thing I have been talking about, isn't it?

A. Well, it is part of the picture, somebody's base plus freight is the lowest total to that point and becomes the governing price, and other mills meet that price by freight absorption, and you have a uniform price, but there are various other selling methods which also produce a uniform price in a market.

Q. Well, now, is it your testimony by this last statement that although price leadership of the base point mill produces it in this method, that there might be other methods of getting the same result under any other system?

A. Yes, in a uniform f.o.b. mill system you have within the territory of each mill a price, and that would be the f.o.b. mill price of the mill governing that territory, plus freight, and you could hardly call it price leadership because I presume that there would be no other seller selling in that particular place.

Q. Is it your testimony that there would be
45047 identical delivered prices under any conceivable set-up?

A. Meeting the conditions which I have already named?

Q. Well, I don't know just what you mean by that, but I am saying in this industry as you understand it, do you say that there would be identical prices under any conceivable—

Trial Examiner Norwood: Do you mean this industry as assumed by him?

Mr. Wooden: Yes.

A. As assumed, and adding the further assumption which I have stated many times, of a definite market in which there are several buyers, well informed, and having opportunity to deal with two or more sellers, I need not of course limit it to several buyers, because if there was only one buyer there, of course, there could only be one price at any one time, under those conditions any marketing price, any marketing method will lead to uniform price.

By Mr. Wooden:

Q. Delivered price?

A. Delivered price at a given time, given place, for a homogeneous commodity.

45049 Q. Now, referring to your testimony on page 44654, regarding the hypothetical question as to refusal of mills to bid f.o.b. mill, do you see it, near the bottom of the page?

A. Yes, sir.

45050 Q. In answering the question, did you assume from the question that the buyers wanted delivered prices rather than f.o.b. mill prices?

A. May I take a minute to refresh my memory as to the question? (The witness is looking at the transcript.)

45051 A. I think it is fair to assume from the form of the question that some buyers might at some time have requested f.o.b. mill deliveries from the mere fact that the mills refused to grant it, but, otherwise, I did not make any assumption as to that point.

By Mr. Wooden:

Q. Well, you assumed, then, that the mills were disregarding the requests and wishes of some of their individual customers?

A. I assume that they were refusing requests from their customers, or prepared to refuse such requests if they were made.

Q. Would your answer there on direct have been affected if you had assumed in addition to the facts stated in that question, the following: That the Federal Government was unable to buy cement f.o.b. mill although the industry was requested by the President to do so, to permit the Government to buy f.o.b. mill?

45052 A. I would not think that would affect my answer. It would still be possible for each mill to arrive at its own conclusion as to what it should do.

Q. Would your answer be affected if you were to assume that representatives of the various mills discussed the President's request and decided to refuse it?

A. Well, that is as to matter of fact, I would still think that any mill could arrive at that conclusion in its own interest and without combination or collusion. I would not know as to the fact, as to whether they did actually enter into agreement or not.

Q. Would you say that after competitors discuss a question of policy like that, that they still can act individually as a matter of individual self-interest if they follow a common policy?

45053 A. Well, there seemed to be two parts to that question. If after a conference in which the matter has been discussed the competitors have not entered into an agreement, they could still act each one in his own interest.

The second part of the question seems to ask if each could act in his own interest in accordance with a common policy,—was that the language?

By Mr. Wooden:

Q. Yes.

Mr. Bond: Read it.

Mr. Wooden: He has got it.

A. I do not quite understand what that means.

By Mr. Wooden:

Q. Well, you have been testifying here on direct about how people might act from motives of interest, individual self-interest, and I am asking you whether you think they are acting from individual self-interest under the assumed conditions that I put to you.

A. Whether they could act from motives of individual self-interest?

Q. Yes.

A. Why, I think one could so act.

Q. And that would conform to your idea of act-
45054 ing from individual self-interest, would it?

A. Well, I have only testified that under conditions assumed I think a mill could act according to its own self-interest. As that question stated, I did not see that it set up any hypotheses that bound a competitor to act contrary to his individual self-interest.

Q. When you testified so many times about you believed that competitors could do these things that are set forth in the hypothetical question solely from considerations of individual self-interest, you meant to exclude, I take it, any kind of individual self-interest that flowed out of some common interest?

A. Well, I can concede—

Mr. Bond: Wait a minute. Out of some common—

Mr. Wooden: Yes.

Mr. Bond: What?

Mr. Wooden: Common interest.

Mr. Bond: You stopped at common.

Mr. Wooden: No, common interest.

A. I can conceive that the action of individuals which acting by itself might correspond to the common interest, but the question seemed to be whether the individual mills are subject to any restrictions upon their freedom which prevents each one acting according to his individual interest.

Trial Examiner Norwood: His question is if they
45055 acted after discussion then could those actions be characterized as you heretofore characterized the actions, as actions from individual self-interest?

The Witness: I have not been told what was the nature of that discussion and what went on in that discussion.

Trial Examiner Norwood: Well, it said after discussion of these matters in which the action was taken.

The Witness: Why, yes, Your Honor, without knowing what was the outcome of that discussion I still am not in position to draw an inference that other and subsequent actions were not guided by their individual self-interest.

Trial Examiner Norwood: Well, suppose that they had come to an agreement, understanding, that such and such ought to be done by all, and then they go away and each

one takes action in accordance therewith, could you then characterize that as independent action for individual self-interest?

The Witness: Well, if I had the hypotheses that the competitors had come together and agreed between themselves upon a certain line of action, and thereupon the mills followed that line of action, I would consider that that was collusion or agreement.

Trial Examiner Norwood: Well, suppose they did not actually agree to set a price, or to do this particu-
45056 lar thing, but they agreed in principle a strict line of action should be—

The Witness: Well, the very distinction you make, Your Honor, seems to me between a compelling agreement and a situation that leaves the individuals free to act according to their judgment.

Trial Examiner Norwood: That is what you were talking about, then, when you referred to individual action through self-interest?

The Witness: Yes, Your Honor. I did not see up until the hypotheses that you, yourself, made that there was anything in there that precluded the action of each mill on the basis of its own interest.

By Mr. Wooden:

Q. Doctor, when you testified on page 44656 that under the assumptions contained in the question you were then answering, that you would expect the delivered prices to be generally uniform, I take it that is because you thought there would be something corresponding to a true market at the destination,—at each destination?

A. All I need to assume is the conditions stated in the hypothesis to the question, those seem to me to describe a situation in which it would be natural to suppose that the quoted price at any destination be uniform.

Q. Well, weren't you drawing in your answer
45057 there, drawing on the economic theory that is well recognized among economic writers that the prices in a truly competitive market tend to be uniform?

A. I state that principle just a little differently, as I have stated it many times.

Q. Well, you recognize the principle I am referring to, don't you?

A. Yes, I do.

Q. Weren't you drawing on it at that point when you answered there?

A. I am taking these hypotheses and finding that they described a situation in which according to fundamental economic principles of demand and supply, price, market, I would conclude that the price would be uniform.

Q. And you were drawing on the economic principle there that that would be the case in a true market, a truly competitive market, weren't you?

A. Well, in a market in which there was a group of buyers well informed with a choice of sellers.

Q. And competing with each other?

A. And competing, and a homogeneous product.

Q. And you were drawing on the economic theory that under conditions of perfect or pure competition that would be the result, weren't you?

A. It is also the result under other conditions of 45058 competition.

Q Weren't you there drawing on the economic theory that would be the result under pure or perfect competition?

A. I was applying the general principle that that is true under all types of competition to this particular hypothesis which I think describes a condition of imperfect competition.

Q. Well, Doctor, can't you tell me whether in your testimony here about the tendency of prices to be uniform in a market, you are referring to the theory that economists generally recognize, are you not, that in a truly competitive market there is that tendency?

A. Yes, there is that tendency in a truly competitive market, and that includes not only the perfect and the pure competition but also the imperfect competition, and since you mention—

Q. In other words, there is no—

Mr. Bond: Let him finish.

A. Can I finish, please?

Since you mentioned the writings of economists, it should be recognized, as I have already stated previously, that if you go back some years you find economists very often did not bring out this clear distinction between perfect, pure, and imperfect competition which we now use, and when they stated this principle they often stated it in terms of the competitive market, or the purely competitive market,

some of them, I think that is, went to the extreme of
45059 calling it the perfect market, or under perfect competition. Some of my own writings, I think, appeared before we had adopted this modern terminology, and I have no doubt you will find among the writings of economists many statements in which this principle is expressed in terms of the true market, perfect competition, the truly competitive market, all those different phrases, but all that can be stated in a general principle, which was true then and is true now, and which relates to markets in which these different kinds of competition prevail.

Q. Well, now, you are then trying to apply the theory recognized by economists of the effect of pure or perfect competition in a true market to this method of marketing cement, aren't you?

A. Not if you limit it to pure and perfect, because it applies also to imperfect competition.

Q. Well, what basis in recognized economic theory is there for the assumption that regardless of whether it is a true market and a truly competitive market, that the prices will be uniform,—is there any basis in economic theory for that?

A. Well, barring the question—

Q. Oh, why can't you answer that?

A. The word "true"—because you have changed the question now from the kind of competition to the kind of market.

Mr. Wooden: I have not changed it.

Mr. Bond: Oh, yes.

45060 Mr. Porter: Oh, yes. You talk about perfect competition.

Trial Examiner Norwood: Have you assumed that at all?

The Witness: Well, I think the answer is probably yes to that, in that economic theory of uniform prices is not generally expressed in terms of a market or true market, but in terms which I have already stated many times of the presence of a number of buyers, and so on; perhaps I do not need—

45061 Trial Examiner Norwood: And that is your basis in economics for it?

The Witness: Yes, that is the modern careful statement of it.

Now, if you go back among all the writers of economics

to which this question apparently relates you can find a great variety of formulas of that principle relating to markets, true markets, perfect competition.

Trial Examiner Norwood: I think that answers it, Doctor.

The Witness: And I want my answer understood as including those other statements, even though they use a somewhat different terminology from that which is used in a more careful modern book.

By Mr. Wooden:

Q. So I understand it is now your testimony that it is a recognized economic theory that price will be uniform in any kind of a market under any kind of competition?

A. That is not the way I stated it, no.

Q. That is the effect of it, as I understand it?

A. I will be glad to repeat it, if you wish.

Markets will be uniform of a homogeneous commodity at a certain place, certain time, where there is competition between well informed buyers who have their choice
45062 of many sellers.

Q. Isn't that just a repetition of the recognized economic theory?

A. It is my way of stating it, yes.

Q. That is the recognized economic theory?

A. I think it is.

Q. But it applies to a condition of pure or perfect competition in a true market, doesn't it?

A. Yes.

Q. Yes.

Now, aren't you, Doctor, taking that theory, recognized theory, and trying to apply it to an industry where you, yourself, say it is far removed from perfect or pure competition?

A. Certainly, because in answering your question I said it applied to a condition of pure and perfect competition, but it also applies to a condition of imperfect competition which was not included in your question.

Q. And you say recognized economic theory states that?

A. Yes, sir.

Q. Referring further to your testimony on page 44656, where you were defining price as being delivered price,—do you have it?

A. Yes, the top of the page.

"What do you consider is the price of cement?"

45063 Q. No, it is right in the middle. "Well, strictly speaking"—have you got that?

A. Yes.

Q. In the course of that answer you said that the price paid by the buyer would have to cover the cost of freight the same as any other cost which the seller incurred in producing and delivering a product. Were you assuming there that the seller incurred the cost of freight?

A. Yes, in the sense that the seller is under obligation to see that the good is delivered in the market.

Q. Did you assume that the seller was incurring the cost of freight in the sense of paying it out?

A. He might have paid it out to a transportation agency, or he might have incurred it as a cost in supporting his own delivery system.

Q. Which did you infer? Which did you assume?

A. Both.

Q. Well, let us assume that the ordinary practice has been for the buyer to pay the freight to the railroad company, and the seller to have nothing to do with paying that freight, and the railroad company making no report or accounting to the seller of what that freight was, and the buyer then paying the balance of the delivered price to the seller. Now, would your answer have been any different if you were to assume that?

A. No, that would not affect my answer.

45064 Q. The price would still be the delivered price?

A. The price is what the buyer pays. It is what the seller receives. Now, it may not be that the seller actually received all that money. He may have some arrangement with the freight company to receive a part of it. He may have arrangements with the buyer to pay part of it to a freight company. He might even have an arrangement to have the whole thing paid not to himself, but to his bank, or some agent, but the price is that which the seller receives and which the buyer pays, and the fact that some elements of cost are separated out and arrangement is made between the buyer and seller that those particular elements be met by payments to a third party, it might just as well be labor or anything else, as well as freight,—has nothing to do with the price, the delivered price.

Q. Now, you just said what the price is, what the seller receives and what the buyer pays.

A. Yes.

Q. Is there anything that corresponds to that definition

of yours except the mill net which the seller receives from the buyer and the buyer paid to the seller?

A. Well, I tried to make it clear that in what the seller receives I include all that which—

Q. Which the seller does not receive?

A. All that which the buyer is under obligation to
45065 pay for the product and whether an arrangement is made that the actual money pass to somebody other than the seller, either for his account or because some part of the cost he has arranged to be borne by some third party does not in my opinion affect at all the definition of a price, and when I said what the buyer received, I did not limit it to the actual money he received from the seller, I included all of this complex of payments which the buyer makes.

Q. Well, isn't the ordinary economic definition of a price the monetary amount that the seller receives?

A. Yes, in—

Q. Is that your definition in your textbooks?

A. Yes, in just the way in which I now define it, and qualified it.

Q. Did you qualify it in any such way in your textbooks?

A. I was not aware that it was necessary to do so.

45082 Q. Now, referring to your testimony on page 44658, about the middle of the page, do you see your testimony beginning with "I think practically all economists"?

45083 A. Yes.

Q. You were there stating, were you not, the accepted economic theory that that would be the result under conditions of imperfect competition?

Mr. Bond: We have just been over there.

Mr. Wooden: But he has been over it on this page. Why can't I go over it on this page?

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Let him answer. Objection overruled.

A. No, I did not limit this to conditions of imperfect competition.

By Mr. Wooden:

Q. You say, then, that practically all economists would agree that that would be the result in any condition other than perfect competition?

A. No.

Q. Just what do you mean by that?

A. Well, I have said many times that it would be the result in a condition in which a homogeneous article is sold in one place at one time to several buyers who were well informed and in competition with each other and have the option of purchasing from several sellers.

Now, that condition might be marked by perfect,
45084 pure, or imperfect competition, as I use the terms.

Now, if you ask about the judgment of practically all economists, once more I have to recognize that it is a large order for me to state what all of a hundred or more economists would say. What I am saying is that this is the concensus of their theory. They will express it in various words, as I have already said, but this statement will not be substantially in disagreement with the spirit of the principle stated by all economists, with two conspicuous exceptions, whom I have named, I think.

Q. You mean to say, Doctor, that as you stated it there on that page, and with the explanation you have now given, that you meant in competition with each other, and so on, and the other things, you state that Dr. Fetter has taken any different position?

A. His—so far as I have studied his works, his writings have varied somewhat, but I think even he would agree to this statement, excepting that he has a different definition of "price" and "market," which throws it all out.

Q. Well, then, what you said a moment ago, the exceptions referred to were not exceptions at all; you think even he agrees with it.

A. Well, I withdraw the reference to exceptions.

Q. You just stated that you and he would agree. I think he would.

45085 A. Well, the trouble is that this implies a definition of "price," you see, and "market," and Professor Fetter's definition of "market" and "price" makes this principle quite a different principle.

Q. That is another question. The testimony does not go into the question of what is price.

A. Well, that is the reason I thought, in strict accuracy, I had to recognize that Professor Fetter, and possibly one or two others, might not be in agreement with the rest of economists on this. I think they would agree with the bare statement of the principle of uniformity

of price in a given market, but since they define "price" and "market" differently, that combined with this statement makes principles with which I think the other economists are not in agreement.

Q. Now, tell us what economic writers say that prices tend to be identical at each destination under competitive conditions, and where did they say it?

A. Well, I think practically all economists have said the substance of that, not in those precise words.

Q. Can you tell me who said the substance of that in my question, and where they said it?

A. Yes. I have a list.

Q. I want you not only to tell me the people, but I want you to point out the page and line of their book. Can you do that?

A. I can't do that right here without some
45086 memoranda. I can tell you the names of the books.
45087 Q. Can you cite the page and line of every writer that you refer to where he said that prices tend to be identical at each destination under competitive conditions?
45088 A. I can do that if you give me time to refer to my notes.

Trial Examiner Norwood: How long would it take to get that material up?

The Witness: It will take quite a little while. Although I have notes covering this, they would have to be tabulated, examined, and analyzed.

Q. And can you also tell us what economic writers say that price in the economic sense of supply and demand in a competitive market means a price delivered at various destinations?

A. I think I can.

45090 Washington, D. C.,
Tuesday, October 1, 1940.

45091 FRED R. FAIRCHILD thereupon resumed the stand and testified further as follows:

*Cross-Examination (Continued) by Mr. Wooden.*

45099 Q. Wouldn't you say that it is necessary to have several buyers and sellers in a market in order to 45100 make it a real market?

A. No. I think I have already testified on that point. Many economists would say that one buyer and one seller is enough to make a market; others insist that there must be at least two or more buyers; some insist that there further must be several sellers. I would not wish to be dogmatic as to that. And one definition or another may be useful if you lay down your definition and adhere to it.

Q. Well, I am calling your attention to volume 1 of your textbook on elementary economics, page 251, and ask you if you did not say there "And if we assume a real market in which there are several buyers and sellers"?

A. Well, that simply means that in the development of the laws of demand and supply in this connection we set up a condition in which there were several buyers and sellers.

Q. Yes, and you thought that several buyers and sellers were necessary to make a real market, didn't you?

A. The statement does not say that.

Q. Didn't you say "and if we assume a real market in which there are several buyers and sellers each fairly familiar with the conditions of demand and supply of eggs on this particular day, this price is the only price at which any considerable amount of eggs will be exchanged"?

A. Yes, but that is not saying that a real market requires those buyers and sellers. That was one of 45101 my assumptions for the purpose of the investigation. I wanted to assume both a real market and a market in which there were several buyers and sellers.

Trial Examiner Norwood: That expression "in which several buyers and sellers,"—did you intend that to express a necessary element of a real market?

The Witness: No, I did not. It could have said a "wholesale market," or a "retail market."

Trial Examiner Norwood: Did that add to the concept of a real market?

The Witness: No; it added to the hypothesis which I laid down for my investigation.

By Mr. Wooden:

Q. Can you cite any place in your writings where you said that the existence of one buyer and one seller in a market constituted a real market?

A. I can't offhand from memory, and I am not sure that I may have ever said so. As I have said, I do not stress the precise definition of a market as to the number of buyers and sellers, and, so far as I am aware in my writings, I have taken hypotheses in which there were several buyers and sellers. I doubt if I have at any point made a statement which would deny that a market might exist if there were one buyer and one seller, but even as to that I am not sure from memory.

Q. So far as you know, is this the first public
45102 occasion on which you have taken the position that a real market might exist where there was only one buyer and one seller?

A. I do not know quite what you mean by a public occasion. It is perhaps the first time I have given testimony to that effect, but that is because I can't recall that the question has ever been asked of me in giving testimony.

Q. Have you ever taken it in any of your writings or any addresses that you have made that a real market might exist where there was only one buyer and one seller?

A. I can't recall that I have ever had occasion to discuss that particular point in an address. I might add that—

Q. In an article?

A. I do not recall one now.

I might add that I am a member of a committee of economists called the Committee on Economic Accord, and the report of that committee, which defines various economic terms, does specifically say that there could be a market with only one buyer and one seller. My membership on that committee might perhaps be taken as a public recognition of that fact.

Q. How recently has that pronouncement been made?

A. Well, this committee has been working now for three or four or five years, and I could not tell just when that particular announcement was made.

Q. Was it after you were retained in this case?

A. I think not. I think it was before.

45103 Q. Tell me when, approximately when, you made that pronouncement.

A. Well, I should say three or four years ago, something like that.

Q. And made it to whom? Under what circumstances?

A. Well, a committee, or a small group is working on the formulation of these definitions. They formulate them. They send the first draft to this large group that belongs to the committee asking their criticisms and suggestions. Those go back to the editing group, I may call it, who consider the suggestions; perhaps go back again to the committee; and eventually adopt the phraseology which is sent as their final statement to members of the committee.

Q. You are on the small group?

A. No, I am not.

Q. Has the large group approved this particular pronouncement?

A. The presumption is, because it has been issued by the small group after submitting it to all the members of the large group.

Q. Well, is it to be reviewed by some still larger group, or has it been finally approved by all those who have an opportunity to approve it?

A. Well, the approval comes by—in a negative way, by failing to criticise or take exception to it, and in

45104 some cases there may be a majority and minority vote committee. An overwhelming majority would lead to the adoption of a particular phraseology.

Q. Was there a minority opinion on this particular point?

A. I can't recall.

Q. Wasn't that pronouncement of the group to which you refer given out subsequent to the issuance of the complaint in this case, since July, 1937?

A. I doubt it, but I could not recall definitely, because there have been hundreds of these communications coming back and forth, and I can't place from memory the date of any one. I am perfectly certain it has nothing to do with the complaint in this case.

Q. You can't say whether it was before or after?

A. No, I can't say that.

Q. Don't economists—when they theorize about the prices in a real market, don't they assume that the prices are automatically set by the varying reactions of both buyers and sellers?

A. I would not say automatically. I think it is correct to say that the actions and reactions of buyers and sellers in a market are the actions which finally lead to a price in that market.

Q. Don't economists when they theorize about price in a real market theorize that it is not set consciously by any person?

A. Not necessarily.

Q. Not necessarily. Isn't that the basis on which
45105 they theorize, that the price is not the conscious act of some one person?

A. It might be the conscious act of one person in a market in which there were one buyer and one seller followed by the action of others in the market.

Q. Did you not write in Volume I of your Text on Elementary Economics, pages 91 and 92, as follows:

"The reader will also recognize that this mechanism by which price regulates production and is itself regulated by production is an automatic thing not consciously imposed by any person."?

A. Here we are discussing what is back of price. Perhaps, I should refresh my memory as to this.

Q. First, answer my question. You did not say what I read to you?

A. Well, this is a quotation from my book. This is referring to the mechanism by which price regulates production.

Q. Yes.

A. And is itself regulated by production, and that is not consciously imposed by a person.

Q. Well, you mean that the price in the market that you were analyzing there was that sort of price, do you not?

A. This does not tell what kind of price it was.

Q. I mean it was a sort of price that was not consciously set by any person?

45106 A. This does not say that there. It says that "The mechanism by which price regulates production and is itself regulated by production is an automatic thing." That is the mechanism.

Q. You did not mean to say that price itself was automatic and was not imposed consciously by any person?

A. That is not what this sentence says.

Q. That is not what economists mean when they talk about price growing out of supply and demand?

A. Well, in the case of market, when we say that price grows out of supply and demand, we mean that forces of supply and demand meet, and that price is determined. That does not mean that there is not conscious action taken by buyers and sellers. In the ordinary case, no one buyer or seller, by his conscious action, sets the price. A seller may first set a price, and then wait to see the reaction of buyers or other sellers, and their reactions lead to a change in that price, and finally the reactions of buyers and sellers in the market reach an equilibrium point, which, for the time being, is the price of that thing in that market. I think that would ordinarily not be properly described as a conscious determination of the price by one buyer or seller. I think it, on the other hand, means that buyers and sellers do take conscious action, of course.

Q. I mean the final price that comes out of those various reactions; that is automatic and not determined by the conscious act of any one seller?

45107 A. Except in the case of monopoly, where you may have a price actually determined by one monopoly. The market price, under conditions of competition, is not determined solely by one person.

Q. Do I understand you to say that a price that was determined, set consciously by the act of some one person, would or would not be a monopoly price?

A. I did not quite say that. I said that when a monopoly set its price, that, for the time being, would be a price set by the conscious act of one seller.

Q. Well, I am asking you whether, when a price is set in a market by the conscious act of one seller and that conscious act determines the price, is that a monopoly price?

A. That would not follow; no.

Q. Would you say it is a competitive price?

A. What you are describing seems to me to be one of the stages in determining a competitive price. A seller sets the price in the market. Other sellers decide to follow that or offer a lower price.

Q. Suppose they would all decide to follow—

Mr. Brick: Let him finish his answer.

A. (Continuing.) Buyers decide whether to buy or not at that price, and their particular seller finds he is selling a very small amount, we will say, and that conditions of demand are such that he should, in his judgment,
45108 set a lower price until this equilibrium is reached, under conditions of competition.

Trial Examiner Norwood: In that quotation there, he is setting up the price, is he not?

The Witness: You mean the last quotation?

Trial Examiner Norwood: Yes. If his figures were accepted, then his price would be made, would it not?

The Witness: But it would not be determined by the individual action of that one person.

Trial Examiner Norwood: It would be determined by his action and the action of the first man who accepted that price, would it not?

The Witness: If we are talking about a competitive price condition, as I assume we are now—

Trial Examiner Norwood: We are talking about making the price.

The Witness: But we have to look at the conditions as to whether it is competition or monopoly.

Trial Examiner Norwood: Would that make a price, when one man offered a certain figure and the purchaser accepts?

The Witness: No; what makes the price is the purchaser accepting it and other purchasers determining to what extent they will buy at that price, and other sellers determining whether they will follow or not. It is a little like—

45109 Trial Examiner Norwood: That would not be a price, then; would it?

The Witness: It would be one step.

Trial Examiner Norwood: I mean those conditions.

The Witness: It would be one step in the method of determining price; but even if that should stick as the price, I would not say this one person alone had set the price.

Trial Examiner Norwood: I was speaking of two persons.

The Witness: Well, two persons alone. It is a little like Adam Smith's illustration of work done by a pair

of scissors. Each blade of the shears is essential, but you cannot say that one blade alone did the work; and so if one seller offers a price, you do not have to determine what the market price—

Trial Examiner Norwood: I was asking about the two blades—the offeror and the acceptor.

The Witness: Yes. The seller is one of the blades, but the point is that the other blade is required to arrive at these forces of demand and supply upon the market.

Trial Examiner Norwood: Thank you.

Go ahead.

By Mr. Wooden:

45110 Q. Well, do you say, Doctor, that the price in a market may be set consciously by some one person?

A. Well, only in the case of a monopoly.

Q. Now, you have advanced the opinion that market is usually where the goods are delivered to the purchaser. Would you say that, assuming a condition where, for many years, cement was delivered to the railroad for shipment to some particular consignee, with the seller disavowing the responsibility either for the freight or for safe delivery, that, economically speaking, that would constitute delivery to the buyer's agent?

Mr. Bond: Your Honor—

A. That seems more a legal question than an economic question.

By Mr. Wooden:

Q. I was asking you for the economic angle of it.

Mr. Bond: Your Honor, the Professor has stated what I was going to say. I thought it was a legal question.

Trial Examiner Norwood: All right.

A. Economically, I would put it this way. The seller has undertaken to see that the good is delivered at a certain market where the buyer wants it, and that good delivered to that market is what the buyer pays for and what his price relates to, and that, economically, is the essential thing.

By Mr. Wooden:

Q. You are not answering my question, Doctor.

45111 A. Well, I am trying to answer what seem to be its economic aspects.

Q. I am asking you whether, economically speaking,

assuming the condition that I have outlined, whether delivery to the railroad was delivery to the buyer's agent.

Mr. Bond: If Your Honor please, I do not think you can talk economically—

Trial Examiner Norwood: Objection sustained. I think we have had sufficient light on this subject. We have had a great deal of it.

By Mr. Wooden:

Q. Now, Doctor, I am directing your attention to your testimony on page 44675, and particularly to your testimony on lines 13 to 15, inclusive, where you said Dr. Fetter expressed an opinion to the effect that freight is not included in the delivered price at any particular point. Now, will you point out to me where Dr. Fetter ever said what you said he said?

A. I cannot give you from memory the reference, but I have checked on these books, and one of Professor Fetter's books included statements which said that price is the freightless price, and that the price at the place of delivery does not include the freight to that point.

Q. To it or from it?

A. To that point—from the mill to that point.

Q. Can you cite me to any place where Dr. Fetter
45112 ever said that freight was not included in the delivery price at any particular point?

A. Well, I cannot cite from memory the precise page.

Q. Would it not be ridiculous for anybody to take the position that the freight was not included in the delivered price?

A. I think it would.

Q. As a matter of fact, you have read Dr. Fetter's testimony.

A. Yes; and what he said was that it was not part of the price at a certain place, that the price would be—

Q. You said here that he said the freight was not included in the delivered price. Now, I want you to point out where he ever said it, and you say it would be ridiculous if he had.

A. I do not say it would be ridiculous if he had. I say it would be a ridiculous statement that price was not included in the delivered price at the place of delivery.

Q. As a matter of fact, did not Dr. Fetter say on page 44781 of this record, as quoted on that page from his testimony, just the opposite of what you said he said here?

A. I have your place. The quotation is that the—

Q. Beginning with line 6 and running to line 9.

A. Yes.

Mr. Bond: May we have it read, if Your Honor please?

Mr. Wooden: Yes.

By Mr. Wooden:

Q. Did not Dr. Fetter say, as there quoted:

45113 "The word 'delivered price' is a compound term meaning both the price of the cement and the price of the freight necessary to transport the cement from the place at which it is sold to the destination."?

Mr. Bond: Why not read just before that?

Mr. Wooden: Because I do not want to, and I do not need to, for this purpose.

Trial Examiner Norwood: Can you answer the question now?

The Witness: Yes; and in this quotation Fetter says just that.

By Mr. Wooden:

Q. And is not that just the opposite of what you said he said over here on page 44675?

A. No, it is not. What I criticize is the statement: "The word 'price' as applied to a market, priced in and at a market, is a freightless price."

Q. That is something else.

A. That price is a freightless price.

Q. That is something else.

Mr. Brick: May the witness continue?

Mr. Wooden: Yes; let him talk all he likes.

Trial Examiner Norwood: Gentlemen.

Off the record, please.

A. The passage on page 44675 quotes an answer

45114 by Professor Fetter to the effect that in a typical market at a definite local place without inclusion of freight, that the rule holds that there is a tendency toward uniformity of price in that market. What I criticize is the exclusion of freight in arriving at the price in that market.

Q. In the course of your criticism, you said that Fetter expressed the opinion that the freight was not included in the delivered price.

A. I do not recall where I said that.

Q. On lines 14 and 15 on page 44675.

A. Oh, I see the place.

Q. That is what I pointed out to you in the first place.

Mr. Bond: Now, Your Honor—

Trial Examiner Norwood: Yes; leave that off the record.

Please, gentlemen.

A. I evidently used the words "delivered price" to make clear what I meant by the price at that place, that it was the delivered price, whereas the criticism is that these other economists think the price at that place is not including the freight and the delivered price as being the sum of the freight and price.

By Mr. Wooden:

Q. Are you willing to agree that you misstated yourself when you expressed the opinion that Dr. Fetter 45115 said that price was not included in the delivered price at any particular point?

A. I am willing to admit that in trying to make perfectly clear what I meant by "price," I did use a term which might be misconstrued as referring to what Fetter said. I had perfectly in mind what Fetter said in the quotation on page 44781, that price is a freightless price, with which I agree, and that the delivered price, as he uses the term, is that price which is the sum of the price and freight. Using the words "delivered price," as he himself uses them, my words on page 44675 would not be strictly accurate; but using the words as I have used them, and as I intended them to be meant, was that they meant simply the price at the place of delivery.

Q. All right. You now do not think that Dr. Fetter should be charged with having said that freight was not included in the delivered price?

A. Not when you take his own definition of "delivered price."

Q. Is not your definition of "delivered price" the same as his?

A. My definition of "delivered price" is the price at that place, which includes freight.

Q. That is his, is it not?

A. No; he says the price—

Q. Delivered price, not price, now, but delivered price.

A. Well, I say my definition of "delivered price" is price at that place.

45116 Q. That is his definition, is it not?

A. He says the word "price" means the freight-less price.

Q. We are talking not about price here, but about delivered price.

A. Yes.

Q. Do you mean to say you have any different idea of what delivered price is than what Dr. Fetter has?

A. Just in the way I have pointed out, that his idea of delivered price is the sum of the two things, the price and the freight. My idea of delivered price is the price.

Q. But it includes freight?

A. Yes.

Q. It is not the sum of several things?

A. It is not the sum of several things, but several things have entered into the cost of the seller, which led him to take such action as he has.

Q. Now, going further on page 44675, lines 16 to 18, you say there that it is:

"* * * the consensus of opinion of these some 88 economists exactly the reverse, that delivered price includes whatever cost is required to get the goods delivered at that point."

Now, you are bringing there to your support the claim that these other economists say that delivered price includes cost of getting the goods delivered.

45117 A. The same explanation goes to the phrase there. By "delivered price," I mean the price at the place of delivery. I define that as the price at that place.

Q. Are you not there saying, Doctor, that these 88 economists are exactly the reverse of what Dr. Fetter said, when, in fact, as you stated, delivered price includes whatever cost is required to get the goods delivered? Is not that what Dr. Fetter says is the delivered price?

Mr. Bond: I object. The question misquotes the witness. He has not said that delivered price—

Trial Examiner Norwood: Objection overruled. He may ask him if that is a fact.

Mr. Bond: But he said "when you said," and then he misquotes him.

Trial Examiner Norwood: The witness can correct it. The objection is overruled.

The Witness: I would like to hear the question again.

Trial Examiner Norwood: Read it.

(Question read.)

A. Well, the same explanation goes here. I use the words "delivered price" to mean the price of the goods as delivered in that place, and that means price. Dr. Fetter uses the word "price" in that place to exclude the freight.

By Mr. Wooden:

Q. No; but—

45118 A. And in that sense these other economists differ. Now, I have already said that taking Dr. Fetter's own definition of "delivered price," he states that it is a combination price of goods in the place and freight to the place, and on that I find these other economists generally in agreement.

Q. You will not say that you misstated yourself here on lines 16 to 18, page 44675, when you said these 88 economists were exactly the reverse of Dr. Fetter's position when they say that delivered price includes whatever cost is required to get the goods delivered.

A. No; I do not say I misstated it. I see the use of the word "delivered" there led to a possible misapprehension, which I certainly did not intend.

Q. Did you intend to use the word "delivered"?

A. The meaning, so far as I was concerned, would have been the same if I simply said the "price." As I said, when I put in the word "delivered" I meant the price at the point of delivery, not at some other place.

Trial Examiner Norwood: In view of these explanations, do you now say that these 88 economists are exactly opposite to Dr. Fetter's position?

The Witness: Yes; they are on that essential point.

Mr. Wooden: No—

The Witness: Which is the definition of "price" at the place of delivery, with respect to freight.

45119 By Mr. Wooden:

Q. Do you mean to say that these 88 economists are on exactly the reverse of Dr. Fetter's position with regard to what is the delivered price?

A. Where they differ is his—

Trial Examiner Norwood: Wait a minute. I think you should answer that directly, Doctor. It will save a great deal of time.

The Witness: Yes; I am trying to, Your Honor. As Fetter defined "price," it is the sum of the price and the freight. As I define "delivered price," it is the price at the place. I find that Fetter and perhaps one or two others agree in that concept, and the consensus of opinion among others is the same as my concept, which is different—

Mr. MacIntyre: If Your Honor please, the witness is not answering the question put to him, as to whether or not these 88 economists agree with Dr. Fetter's definition as to what is included in the delivered price. May we have that answer?

Trial Examiner Norwood: Well, he is giving—

Mr. MacIntyre: No; he is not answering the question.

Mr. Wooden: May we have the question read, and then ask the Doctor if he cannot make a direct answer to it?

Mr. Bond: And may we have the answer read at
45120 the same time?

Trial Examiner Norwood: Yes.

Mr. Bond: So that we can see—

Trial Examiner Norwood: But I think the answer would rather confuse us. Let him give us a new answer. Read the question.

(Question read.)

Trial Examiner Norwood: Answer that question, and if after you answer that question you wish to state something else you may do so.

A. These economists and Dr. Fetter—all economists would find that the delivered price at a certain place included the freight to get it to the place; but the whole point of my testimony here is to the effect that in the one case, the consensus of opinion among these other economists is that that is the price, whereas Fetter has a definition of "delivered price," which makes it the sum of two things, the price at the place and the freight to that place.

Trial Examiner Norwood: Is not that "delivered price"?

The Witness: That is what Fetter calls it.

By Mr. Wooden:

Q. Is not that "delivered price," in your opinion?

A. In my opinion delivered price is the price—

Q. I did not ask you that. I asked you if what
45121 you just said a moment ago was not the delivered price. I did not ask you whether delivered price was the price.

A. Well, I do not agree with Fetter's statement that delivered price is the sum of the price at the place and the freight to the place.

Trial Examiner Norwood: Do these 88 economists agree with you, or do they agree with Dr. Fetter?

The Witness: The consensus of opinion among them agrees with me.

By Mr. Wooden:

Q. I am going to ask you to type and to bring in here at your convenience the page, the paragraph, and the lines, where these 88 economists say that delivered price does not include the cost of delivery.

A. That is just the reverse of what I have said.

Q. Can you do it?

A. The consensus of opinion among these 88 economists is that delivered price does include cost.

Q. It does include the cost of freight?

A. It does include the cost required to get the goods delivered to that point. I cannot show that they say the opposite.

Q. All right.

Now, Doctor, referring to your testimony on page 44684, with regard to what you would expect bidders should
45122 do on sealed bids to the Government, when you testified on lines 20 to 25, were you inferring that when the bidders were taking into account the destination costs available from other sellers that they were doing this for the purpose of making their destination costs identical with those of other sellers?

A. I am not sure of your line reference.

Q. I included a question there.

A. It seems to come to a question rather than an answer.

Q. Well, I included both.

A. What I said was that as a result of their action I would expect to find the prices would be identical. I did not say that the different mills set out in order to accomplish an identical price. What they undertook to do is to bid the price which they found was the price at that destination.

Q. Well, were you assuming either one thing or the other, as to whether they wanted to make their destination costs identical?

A. I did not think an assumption as to what they wanted to do was necessary to answer this question.

Q. Would it not be rather important as to what they were trying to do?

A. All I had to say was that following my previous testimony, as to how I would expect them to act, the result would be identical prices at this destination.

Q. You are talking about results now.

A. The question was about results.

45123 Q. Were you inferring when you testified about results that they were taking these varying destination costs into account for the purpose of making their bids identical or for the purpose of making them non-identical?

A. They are taking all the facts into account in order that they might make a bid which was either the going commercial price at that place or the price which would be arrived at by calculation as to the destination price to the Government.

Q. Would you not agree, Doctor, that competitors might very well take into account the different destination costs of other mills and the varying destinations and freight rates of other mills for the purpose of seeing to it that they made a lower bid than some of their competitors?

A. I have already testified why, in my opinion, under the conditions laid down in the hypothetical question, I would think it was natural for a mill not to underbid the going price.

Q. Would you expect, as an economist, that when some sellers put more onerous requirements on their bids to the Government, that all the other competitors would normally impose those same more onerous requirements?

A. May I hear that question again?

Trial Examiner Norwood: Read the question.

(Question read.)

45124 A. I would suppose that each competitor would, as best he could, determine what was likely to be the price and the conditions of sale at that destination, and would ordinarily meet that price and those conditions.

Q. Would you expect him to try to make his own the same as the others?

A. I would expect him to.

Q. Even though it would involve imposing a more onerous requirement than had theretofore been imposed?

A. Well, I am not aware as to what may be included in that supposition of "more onerous" condition, but I would expect each mill to meet the price and the conditions which might be found prevailing in that destination.

Q. Even though they were less favorable to the purchaser?

A. I don't get that.

Q. Even though they were less favorable to the purchaser?

A. Less favorable than what?

Q. Than those previously in effect.

A. Why, they would take those that were in effect at the time, even though they were different from what might have been in effect at some previous time.

Q. Would you agree with this statement:

"Although it is essential to draw a sharp distinction between sporadic and constant uniformity in fields in which price is determined by direct negotiation between buyer and seller in each transaction, there is no need for
45125 a similar distinction in the case of competitive bids:

Bids are submitted in response to a specific invitation; they are concerned with a definite transaction. Identity of bids is seldom a mere fortuitous occurrence or the product of natural economic causes, as may be the case of sporadic uniformity in a fluctuating market. Such identity is an abnormal condition which is not to be anticipated in an industry truly competitive."

A. It would help me if I could see that quotation. It is such a long quotation.

Q. I will read it to you again, if you wish.

A. I cannot carry it all in my mind.

Q. I will read it to you again, if you want it.

Trial Examiner Norwood: Yes; read it again to the witness.

By Mr. Wooden:

Q. Do you agree with this statement:

"Although it is essential to draw a sharp distinction between sporadic and constant uniformity in fields in which price is determined by direct negotiations between buyer and seller in each transaction, there is no need for a similar distinction in the case of competitive bids. Bids are submitted in response to a specific invitation; they are concerned with a definite transaction. Identity of bids is seldom a mere fortuitous occurrence or the product of
45126 natural economic causes, as may be the case of sporadic uniformity in a fluctuating market. Such identity is an abnormal condition which is not to be anticipated in an industry truly competitive."

Mr. Bond: Does Your Honor not think that that should be broken up, and that the witness be given one sentence at a time, rather than such an extremely long passage?

Trial Examiner Norwood: I think the witness can answer this question. That would be the shortest method. The objection is overruled.

You may state whether you agree with that or not, or whether you would like to have it written out and a copy of it given to you.

The Witness: Yes, Your Honor.

There might be conditions in which it would be abnormal for identical bids to be received. There are other conditions in which identical bids might be the natural result. As to some of the other parts of that question, or that statement, I think there are parts of it that I certainly would agree with, but I would not accept it if it implies, as it seems possibly to, that, under all conditions, identity of bids is abnormal.

By Mr. Wooden:

Q. Well, do you agree with such portions of the statement as you have not already stated you disagreed with?

Mr. Bond: Mr. Examiner, I think he ought to 45127 have a copy of that shown to him. It is a long passage.

Trial Examiner Norwood: If the witness desires it, he may have a copy of it.

The Witness: It would help me very much. It is very difficult to carry all these details in my mind.

Trial Examiner Norwood: Or you may divide it up into the sentences, and ask him individual questions.

We will take a five-minute recess.

(There was a short recess taken.)

By Mr. Wooden:

Q. Doctor, I am now handing you a typewritten copy of the statement which I read to you in my question and asked whether you agreed or disagreed with. Will you continue your answer after examining the typewritten statement (handing a paper to the witness)?

A. It would, of course, be very helpful to me if I could see the context out of which this quotation is taken.

Q. I think the statement carries a complete thought.

A. Then I can say that as stating a universal principle that identity of bids is abnormal, not to be antici-

pated in an industry truly competitive,—I do not think the statement is correct.

I can imagine of a context in which qualifications and conditions were such which might possibly change my answer.

Q. Would you say that the statement is correct
45128 as applied to some situations?

A. That is not the way the statement reads. It reads as a broad generalization.

Q. I am asking you whether you would say it was correct,—whether it might apply to some given situation.

A. I would like to have you specify the particular conditions you would have in mind for such an answer.

Q. I do not have any in mind. I am asking you whether as a theorist you would recognize that statement as having correct application to any conditions.

A. I find it very difficult to regard it in that way, because it is on its face a broad generalization. I am not able to agree with it without some qualifications, because I think there would be conditions in which it would not be true.

Q. And there would be conditions in which it would be true?

A. That I am not prepared to say from this mere statement without its context.

Q. Well, suppose you were to consider the sealed bids, say, on boots and shoes, where the specifications called for the exact quality from each bidder, the same quality exactly from each bidder, and the bids were submitted by manufacturers. Would you say that the statement would have any application then?

A. I would have to know a great deal more about the circumstances of that industry to be able to say that uniformity would be abnormal.

45130 Q. Do you see any reason as an economist why the purchaser of a million barrels at one time should not have a lower price than the purchaser of a carload or ten carloads?

A. Well, that whole matter of discounts on the basis of quantity is a very complicated matter, involving legal and economic considerations, and I would not be able to make a general statement as to whether in any particular case an allowance would be something to be expected or not.

Q. Can't you see any economic reason for the purchaser

of the million barrels being entitled to a lower price than the purchaser of a single carload or a small number of carloads?

A. I still think that gets so far into factual conditions not covered by the hypotheses before me that I am not able to say whether quantity allowances would or would not be reasonable.

Q. Well, let us assume, then, that in the cement industry a purchaser of a million barrels at one time cannot
45131 get a lower price per barrel than a purchaser who is buying a carload or ten carloads. Then what would be your economic opinion as to whether such a condition is a natural one and one that is exclusive of collusion among competitors?

A. Well, I should say, in the first place, that so far as regards the hypotheses before me, I can see that that might be a natural condition,—or, putting it the other way around, I cannot infer from the hypotheses before me that that condition would necessarily be an unnatural one.

Trial Examiner Norwood: Do you think that situation would indicate collusion or monopoly?

The Witness: Yes; I think it would not necessarily set up an inference of collusion or monopoly.

By Mr. Wooden:

Q. Well, when you say "not necessarily," do you mean it would not support even a logical inference as dis-
45132 tinguished from a necessary inference?

A. Yes; I do not need to limit my answer. It would not set up an inference.

Q. It would not set up any logical inference?

A. It would not set up an inference of collusion.

Q. Do you mean to say that such a condition of
45133 affairs as I have assumed for you would not support any inference of any kind as to collusion?

A. Yes; it would not support an inference of collusion.

Q. Would you say that it would be illogical to draw such an inference from it?

A. I think that would be a fair statement; yes.

Q. Do economists recognize that large quantities, very large quantities, may involve a lower cost of production or a lower cost of selling per unit?

A. They may.

Q. Has the tendency, I mean.

A. Well, there again I hesitate to make a broad general statement. I like the wording of your first question better.

Q. Now, Doctor, referring to your testimony on page 44686 and 7, regarding diversion, you testified about the disturbing effect of diversion upon dealers' business. Wouldn't diversion under the conditions outlined in the hypothetical question that you were then answering also tend to upset this most prevalent pattern of delivered prices?

A. You are referring to my answer on page 44687, I suppose.

Q. Yes.

A. I did not testify that that was the reason why a mill would not permit diversion, and I am not prepared to testify that permission of diversion would upset the delivered price system.

45134 Q. Well, are you prepared to say that it would not, or you just have not thought about it?

A. Well, I am prepared to say that it would not have that necessary result.

Q. Wouldn't it have that tendency to upset the price structure at the point to which the diversion was made?

A. I think that is putting it rather too strongly.

Q. Well, just how strongly would you admit that or deny it?

A. Well, I am thinking of it from the point of view of the destruction of the dealer good will which results, and which mills would actually seek to avoid. A certain amount of freight diversion might go on and still not upset the pricing system.

Q. And, again, a certain other amount might upset it?

A. Well, it is hard for me to imagine from the hypotheses before me what extreme limits of price diversion might go to—freight diversion might go to.

Q. Well, this loss of dealer good will that you were tesifying about, that just amounts to the desire of some dealers to be protected by the manufacturers against competition from other dealers, does it not?

A. I would not put it quite so. It means the dealers become discontented if they find that through freight diversion some other dealer is able to get his cement delivered in their territory at lower prices than they have to pay.

45135 Q. And their discontent arises out of their desire to be protected against that kind of competition?

A. It arises out of their displeasure with that kind of competition.

Q. Now, referring to your testimony on page 44691, lines 20 and 21, where you postulate that the commodity sold would me a homogeneous commodity. Have you been using that term in your testimony in the ordinary dictionary sense or have you been using it in some special sense?

A. I do not recall just now how the dictionary has defined that term. I have been using it in what I supposed was the ordinary use of the term. But in all these connections it particularly relates to the knowledge of the buyers about this commodity.

Q. What does the knowledge of buyers have to do with whether the commodity is actually homogeneous?

A. Well, the essential quality of a commodity being homogeneous is that so far as the buyers are concerned they have no reason to choose one unit as compared with another.

Q. Did you mean by using the term "homogeneous" to imply that the product was nearly identical in quality as produced by different producers?

A. Not precisely that. I mean to imply that buyers regarded the commodity as essentially homogeneous so far as their own needs and desires were concerned, so that
45136 buyers would have no reason to choose one unit as compared with another.

45137 Q. Assume, Doctor, that there are substantial differences in the quality and the utility of various brands of standard cement, would you say that your testimony still holds about the movement and behavior of prices on a homogeneous product?

A. My testimony, I believe, was based on a hypothetical statement that cement was homogeneous. Now, if you ask me to assume such a great variety in quality that it no longer is homogeneous, I can't answer the question on the basis of the hypotheses before me. I can answer that in a different way by saying that whatever the differences in quality, so long as from the buyers' point of view there was no reason to choose one unit over another, my answer would stand.

Q. If you take my assumptions that there is a
45138 substantial difference in quality and utility, you would have to modify your testimony, wouldn't you?

A. Only if those differences meant that the cement

was not homogeneous, because the fact that it was homogeneous is one of the assumptions on which my answer was based.

45139 Q. Now I am asking you to assume that the buyers are not well informed about the differences in quality and utility of the various brands of ce-
45140 ment and ask what difference that makes in your testimony.

Mr. Bond: I still object.

Trial Examiner Norwood: I think he can answer that.

Mr. Bond: May I show him the testimony to which Mr. Wooden refers?

Trial Examiner Norwood: No. He has used that expression in almost every answer he has made to a hypothetical question here. It is very clear. Please, I will ask the Counsel not to interrupt. Let him answer the question.

Do you want it read?

The Witness: I do not think I need to have it read.

Trial Examiner Norwood: Then, answer it.

A. When we say buyers are well informed we mean they are well informed as to prices being offered by other sellers—

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Bond: I submit, if Your Honor please, the witness has a right to have the specific testimony pointed out.

Trial Examiner Norwood: The objection is overruled.

A. Well, that would mean that you may be setting up a different set of hypotheses from those on which I placed the condition of imperfect competition. But so long as—

I come back to the fact that so far as buyers know
45141 this commodity is homogeneous, and they know what it costs, and they have no reason to choose one unit as above another,—the fact that some differences in quality have not been disclosed to them would not affect my answer.

By Mr. Wooden:

Q. Well, assume what I asked you to assume as well as what you were asked to assume on your direct testimony, namely, that there are substantial differences in quality and utility and the buyers are not well informed about those differences.

A. Then you might have a condition—

Mr. Bond: And what is the question?

Mr. Wooden: It has been asked three times.

Trial Examiner Norwood: Can you answer the question?

The Witness: Well, I would like to hear the question.

Trial Examiner Norwood: I will ask the Counsel to pay attention to the question.

Mr. Bond: If Your Honor please—

Trial Examiner Norwood: Read it.

(Question read.)

By Mr. Wooden:

Q. Then, does that affect your testimony?

A. No. As you have put the hypothesis, it would still have a condition of competition, under the assumption which I have made over and over again, that the 45182 buyers see no reason to prefer one unit as compared with another.

Trial Examiner Norwood: That is, without any knowledge of differences the buyers would assume homogeneity; is that correct?

The Witness: That is what I mean; yes, Your Honor.

By Mr. Wooden:

Q. Do you see any economic inference to be drawn from the fact that competing sellers do not inform their buyers of substantial differences in the quality and utility of their products?

A. No one definite economic inference occurs to me.

Q. Isn't it commonplace for competing sellers to emphasize to buyers that their products are better in quality and utility than another and point out in what respects they are better?

A. That very commonly does happen.

Q. And you draw no inference from any condition where it did not happen?

A. No, I do not. I do not think I have sufficient knowledge of the circumstances of the particular case to indicate any particular inference.

Q. Now, referring to your testimony on page 44692, regarding rigidity of price and tendency toward rigidity of price from natural causes: How would you account for the lack, or assume that there was a lack, a marked lack of

rigidity in prices during 1931 and 1932? How would
45143 you explain that in view of your testimony about the natural toward rigidity in the cement industry?

A. Well, that is to be explained by referring to what we mean by a tendency. A tendency means that certain causes in the absence of other forces will produce certain results. I testified here as to the tendency to come from certain conditions which would tend toward price rigidity. My testimony does not say that there never could, therefore, be any change in price or that other forces might not appear some time more powerful than these which would lead to a great change in prices.

Q. Then, you would infer that whatever tendency there was in '31 and '32 was overcome by other more powerful forces working in the opposite direction.

A. That would be a fair inference, that the complex of all forces then working together have produced such and such results. I am not testifying as to the particular facts at that time.

45146 Q. Well, wouldn't economists expect a flexibility and fluctuation of price in a market which was in the category of pure or perfect competition?

A. In—under conditions of pure competition or perfect competition a considerable and rather frequent fluctuation of price is a natural situation. The condition is very different under imperfect competition.

Q. Would you agree with this statement:

"Prices in the practical world of today are, however, seldom stationary, but are generally subject to change, more or less frequent"?

A. Yes. That statement is sufficiently guarded.
45147 so I think it is a true general statement.

Q. Did you have cement in mind when you—you made that statement yourself, didn't you, in one of your textbooks?

A. I can't tell. You have now told me so yourself, I believe.

Q. I call your attention to page 263 of Volume I of your text on elementary economics (handing a book to the witness).

A. Yes, that is my statement, and it is true as a general statement,—admitting various exceptions, of course.

Q. Did you have cement in mind as an exception when you wrote the statement?

A. I find it very difficult what I had in mind when I

wrote statements so many years ago. It is doubtful if I had—

Q. How many years ago? In 1928 it was published, wasn't it?

A. You can tell—

Q. Well, wasn't it published in 1928?

A. The title page will tell. I published a good many books.

Q. Do you want me to show you the title page?

A. I will take your word for it if you read it.

(Mr. Wooden shows title page to the witness.)

A. Yes, it was published in 1928.

Q. Did you also write that "Since conditions are constantly changing, perfect equilibrium is seldom reached and never long continued"?

A. Yes, I wrote that. There is probably a context there that will provide any qualifications that may be necessary.

45148 Q. Did you write that the economic adjustment of price and quantity is more or less irregular; it moves jerkily by fits and starts?

A. That sounds like something I must have read.

Q. Must have read or written?

A. Must have written.

Q. Did you have the cement industry in mind as an exception when you wrote those statements?

A. Well, those are all extremely broad generalizations—

Q. Yes.

A —in a chapter in which they go with other statements which no doubt qualify and explain them, and they are not related to particular industries. And they might—while I can't say what I had in my mind back in 1927 or 8 when I wrote those sentences, they might perfectly well have been written without having in mind any one of the thousand specific industries.

Q. Haven't you written that possibly the closest approach to a perfect market in the world was the New York Stock Exchange?

A. I may have.

Q. Well, didn't you so state on page 291 of Volume I of your textbooks on economics (showing the books to the witness)?

A. Yes, that is right there.

45150 Q. Doctor, didn't you go on to point out that on a single day the price of a certain stock changed 64 times during one day and 39 times in the last hour of the day?

45151 A. You are reading, I suppose, from a page of my book.

By Mr. Wooden:

Q. You do not question it?

A. If you want me to testify that I wrote that, I would only want to be sure that you read what is on the page.

Q. Well, unless you are willing to take my word for it, I will show it to you, at the bottom of page 291 (showing the book to the witness).

A. I wrote on this page:

"The price changed 64 times during the day, 39 times in the last hour's business between 2 and 3 p. m., when trading was very active."

That is merely a statement of historical fact.

Q. Did you also write that these facts showed a high degree of adjustment between demand and supply and price and quantity exchanged, yet not necessarily a perfect adjustment?

45152 A. "They show a high degree"—"They" refers to the previous sentence. Perhaps I should read them both.

I wrote on page 292

"These are all facts as reported on the stock ticker in the commercial market reports, and in the New York and other newspapers of July 29, 1934, they show a high degree of adjustment between demand and supply and price and quantity exchanged, yet not necessarily a perfect adjustment."

Yes, I wrote that.

Q. Just how imperfect would be the adjustment between demand and supply and price and quantity exchanged where the price did not change on a commodity for five years?

A. This situation described in the text is one, as definitely stated, of close approach to perfect competition.

In the more modern terminology I would doubtless have called that a state of pure competition. In a state of imperfect competition that frequent, rapid adjustment of price to conditions of demand and supply does not so generally or so necessarily follow. Under conditions of imperfect competition it is quite natural to find for a long period of time the price not changing.

Q. Wouldn't you say that whereas this course of the price on the stock exchange showed a high degree of
45153 adjustment between demand, supply, and price, that a rigid price not changing in five years showed a low degree of such adjustment?

A. No, I would say nothing of the sort, because you are dealing with two different conditions of competition. Here you have a high adjustment, but under a condition of imperfect competition there may be an adjustment to conditions of demand and supply which does not bring about a frequent change of the price.

Q. Wouldn't you say that it was at least a high degree of imperfection?

A. I have already expressed my opinion about different degrees of imperfection. I do not think that would be applicable here.

Q. I am asking about this. Would you say that a rigid price not changing in five years would show a high degree of imperfect competition?

A. No. I would not use that language.

45154 Q. Will you agree, Doctor, that a high degree of competition causes a high degree of price flexibility?

A. Not necessarily. I come back—

Q. It has no necessary tendency?

A. No, because the result depends upon the conditions of competition.

45155 Q. What is the source and basis of your statement that it is common knowledge that in the construction lines where cement is most important it is a relatively small part of the total cost?

A. I can't go much further than the simple state-
45156 ment that in my opinion this is common knowledge. I have, myself, frequently talked with people in the construction business who know about it, and myself gath-

cred some idea as to the relative part of the total cost of production which is made up—total cost of construction which is made up of cement, and I have assumed that other people—enough other people knew this so that I could call this common knowledge. It does not mean to me knowledge of precise percentages in particular industries, but all that is required of common knowledge is that it is a relatively minor part of the construction cost.

By Mr. Wooden:

Q. Do you say that it is a relatively minor part of the total costs of materials used?

A. No; the total cost of the entire construction.

Q. Including all labor costs and everything of that kind? Construction costs, in other words?

A. Yes. When I say it is a minor part, I mean the part of the structure which is composed of cement is relatively minor.

45157 Q. Doctor, I believe you agreed just before the noon recess that the cost of cement compared to the total cost of materials used in construction projects was not minor or relatively small.

A. No; that is not quite a correct statement of what I said. I said, in saying that cement was a relatively minor element in the cost of construction, I was comparing the cost of cement with the total cost of construction.

Q. Did you not also say that when you compared the cost of cement with the total cost of materials used in the construction, that you would not then say it was minor or relatively small?

A. I think I said I did not compare cost of cement with the cost of the other materials.

Q. Well, I am asking you now to consider the cost of cement in comparison with the total cost of materials
45158 used in a construction job, and ask you if you will not say that it is a very substantial part of the total material cost.

A. That is a matter of fact, on which I do not feel like making an answer.

Q. That is not a matter of common knowledge?

A. Not to my mind. I do not know enough about the

different elements of material costs on different items of construction, and I do not think that is pertinent to the testimony I was giving.

Q. Do you mean to say that you have no idea, and that there is not common knowledge, that the cost of cement compared to the total cost of materials used in road building, for instance, is not very substantial?

A. No, I am not testifying that there is not common knowledge.

Q. All right. If you testified that there is common knowledge on one aspect of it, why can you not testify that there is or is not common knowledge on the other?

A. Because I have enough knowledge, which I think is common, that as compared to the total cost of construction cement is a relatively minor item, but I have no such knowledge with respect to the relation of cost of cement to other materials that enter into the construction.

Q. And the same holds, I suppose, for the relation between the cost of cement and the total cost of mate-
45159 rials used in constructing dams and bridges?

A. Yes. I did not give any testimony as to the relation between the cost of cement and the cost of other materials in any form of construction.

Q. Would you not say that fluctuations in demand for completed structures create fluctuations in the cement demand?

A. Yes; but only a relatively small flucatuation. That was the whole point of the result upon the demand of a product which enters as a component part with some other product, and in a relatively minor proportion, that while without doubt, theoretically, fluctuations in the demand for the whole product cause some change in the demand for the particular element, but they do not cause a substantial change, and, therefore, we expect that particular product to have an inelastic demand.

Q. If you were to assume that in constructing the Rockefeller Center building they used 700,000 barrels of cement, would you say that that was an inconsiderable part of the total cost of the materials used in the building?

A. I could not say at all from just that one assumption.

Q. Would you say it was an immaterial part of the cost of the whole construction?

A. Well, I have never testified that the cost of cement is immaterial. I said, as compared with the total cost of the structures into which it entered, is is a rela-
45160 tively minor part.

Q. You did not mean, when you said it was a relatively small part, that it was inconsiderable?

A. That was not what I said.

Q. When you said it was a relatively small part of the total cost, you did not mean it was considerable?

A. I mean just what I said.

Q. I am trying to find out what you meant by what you said, Doctor. Can you help me?

A. You might ask me the question.

Q. I did.

A. May I hear the question?

Mr. Wooden: Read it, please.

(Question read.)

A. Again, I meant just what I said I was not testifying whether it was considerable or not, but what common knowledge was as to the part it played in the cost of the total structure.

Trial Examiner Norwood: You were considering its proportion to the total cost.

The Witness: Yes; the proportion of the cost of cement to the total cost of the structure.

Mr. Wooden: Unless this witness is prepared to explain what he means by his direct testimony and the matter of common knowledge with respect to his direct
45161 testimony, I shall move to strike it as being based upon nothing but a mere assertion.

Mr. Bond: Is that a comment or a threat or a motion?

Mr. Wooden: That is a motion.

Mr. Bond: You did not make it as such.

Trial Examiner Norwood: That is a conditional motion there. If you mean that as an unconditional motion, I will take it under consideration.

Mr. Wooden: I make it as an unconditional motion, in view of the present state of the record.

Trial Examiner Norwood: If we are to spend any more time on it, certainlly shall deny it, but if we are not to spend any more time on it I shall take it under serious consideration.

Mr. Wooden: I am referring to the witness' testimony appearing at page 44698, running from line 1, where the question begins, down to line 13, where the answer ends.

Mr. Bond: Only part of which, as Your Honor knows, involves the matter to which Mr. Wooden objects.

Trial Examiner Norwood: Well, I will study the record on it.

Proceed.

Mr. Wooden: I assume, Your Honor, I will have a ruling before the cross-examination is completed?

Trial Examiner Norwood: I think so; yes.

45163 Q. Now, referring to your testimony regarding the factor of a guarantee against price decline, the factor being a factor in price rigidity, if you were to assume that the extent of that guarantee were fixed at a certain number of days by understanding among competitors, would you not then say that that was a factor in the price rigidity?

A. So long as customers are protected against a price decline, that is a factor in price rigidity.

Q. I will ask you to assume that the competitors had a collusive understanding as to the number of days against which they would guarantee against decline.

A. Yes; that would not change my answer, as long as there is a period during which the consumers are protected.

Q. You agree, do you not, that if different sell-
45164 ers give a different number of days' protection against decline, that that would be quite a factor in price competition; do you not?

A. Yes, I think buyers would take account of that when they—

Q The seller that gave the longest, the greatest number of days' protection would have that much of an advantage?

A. Other things being equal, if one seller gave a more

favorable guarantee than others, he would have an advantage.

Q. Now, you referred in your testimony to the delay and advantage that accrues from a price increase and about that being a factor in price rigidity, and the existence of old contracts at a lower price, that that would tend to prevent price advances. I suppose you agree, Doctor, that a seller's natural inclination is to get all he can under any circumstances.

A. Well, that is a pretty broad statement. I would hesitate to accept it just as so worded. I agree that, as a general proposition, sellers are guided by the motive to get as much as they can.

Q. Assume that there were new contracts coming up from day to day. Why would not the desire to get an increased price on those new contracts be just as much of a consideration as the effect of the old contract in preventing it?

A. Well, whether one would have as much effect as another is a matter of comparison that I could not answer, but I think you are bringing up again the matter of a tendency. If there is an opportunity to increase re-
45165 ceipts by raising prices on new contracts, sellers would be inclined to consider that, but, if on the other hand, there is a likelihood that on many of their old contracts they will not get this increased return, then the prospect of a rising price would be less attractive to them than if there was not this provision as to former contracts. That is all I think my testimony meant, and, therefore, the presence of this arrangement about delivery on old contracts at the former price makes price change less attractive, and so is an elemenf tending towards rigidity.

Q. But as to whether that element were outweighed by other considerations that would be highly speculative, wouldn't it?

A. Well, all I testified is that this particular circumstance has a particular tendency. What the actual result will be, will be the combination of the various circumstances on the basis of which the seller makes up his mind. All I have said is that the presence of these particular conditions would make him less inclined to raise the price than if those conditions were not present.

Trial Examiner Norwood: Excuse me, for a minute.
(There was a short pause.)
Trial Examiner Norwood: Proceed.

By Mr. Wooden:

Q. Now, on page 44705, you include as a factor in price rigidity the custom of the industry to give several days' notice of the effective date of price advances and
45166 permit the dealers to place orders within that period for all cement that they are willing to take delivery on within 15 days. If that custom is a factor in price rigidity, would you say that it was any more so, any more of a factor in price rigidity if you were to assume that the custom had grown out of some definite collaboration and cooperation among the competitors?

A. I would not think that would make a difference. I was testifying as to the present effect of an existing custom. The historical origin of that custom I should think is not very material to my answer.

Q. And your answer would be the same even if you were to assume that the custom did originate in some form of collaboration or cooperation?

A. Yes. My answer did not go into the historical origin of the custom.

45171 Q. Would you say, Doctor, that the more vigorous and active competition there is the more nearly it approaches the concept of pure or perfect competition.

A. No, I would not put it that way. You may have very vigorous competition under imperfect competition. You may have just as vigorous competition under imperfect competition as under pure competition, and an increase of the vigor of competition under conditions of imperfect competition does not necessarily bring that
45172 form of competition closer to pure or perfect competition.

Q. Well, would you say, then, that meaning that the more vigorous and active competition was under the conditions of imperfect competition the more likely would be the result of uniformity in matters of price and trade practices?

A. I think that would be an accurate statement al-

though it does not include all of the circumstances that would tend toward uniformity; active and aggressive seeking of their own interests by the buyers would also contribute to that.

Q. Would you say that the more vigorous and active the competition the more likely it is that delivered prices will be identical?

A. Well, delivered prices are going to be identical under conditions which I have already laid down; that is, if I may repeat again, a state of competition, a well-informed buyer, and homogeneous product, with buyers having some choice as to which sellers they will patronize.

Now, that condition is one of generally prevailing uniform prices. There may be scattered prices, scattered sales—let me correct that: There may be scattered sales which would be off the price for one reason or another. There may be secret price cutting, and I am not able to say that more vigorous competition would always mean a greater approach to absolutely invariable prices, because one manifestation of vigorous competition might be

45173 a good deal of secret price cutting.

Q. Well, didn't you say on page 44709 that the more vigorous and active competition is the more likely would be the arrival at uniformity in matters of price and trade practice?

A. Yes, and I think it is a general truth that is correct.

Q. But you admit that there might be exceptions to it?

A. I admit that vigorous competition might produce at some time increased amounts of price cutting for the time being.

Q. And you will agree that vigorous and active competition might at times produce a distinct lack of uniformity in matters of price and trade practice, wouldn't you?

A. No, that I do not think. The statement in my answer on page 44709 is, I believe, entirely correct as regards matters of price and trade practice, such vigorous competition is a tendency towards uniformity.

45174 Q. Well, don't you see any difference in the degree of uniformity between a price of $2.30 and a price of $2.3017864?

A. No, I do not see any difference. All the delivered prices are $2.30, and there is no exception. I should say that was complete uniformity.

Q. Just as complete as though it were $2.30 with this long decimal?

A. Why, yes. If you got all the prices exactly alike you cannot get that any more uniform.

Q. Now, Doctor, on page 44711 you began on an analysis of the methods that you would employ in determining whether or not competition has been lessened, and on page 44713 you referred to a historical basis of comparison. Would you say that the historical basis would be of value if it were feasible?

45175 A. Well, is not that just the same as saying it would be valuable if it were valuable there? I do not know that I get the distinction.

Q. I mean, if you had the historical data, would it not be a valuable method of comparison?

A. That means that you have to have all the historical data that you would need to make this a conclusive method of comparison, and the answer comes down almost to a truism, thus stated. As a matter of fact, any historical comparison is apt to be inconclusive, because it involves comparison of two different times, and the only way you get a conclusive comparison is to have all conditions equal, except the one condition whose effect you are comparing, and in historical sequences we practically never can get that opportunity for that sort of comparison, so it seems to me that I cannot do more than say that if you had all other conditions absolutely the same at two different times, and found a difference in this one respect, accompanied by another difference in this one respect, there would be a pretty strong inference that this particular case brought about that particular effect.

Q. Do you mean to say, Doctor, that you disregard any historical evidences, unless you could be sure in advance that it was absolutely complete in every detail and respect and omitted nothing?

A. I mean to say that to get an absolutely con-
45176 clusive result, you would want just about that condition. I do not mean to say that I would not want to attach all the importance that I could to historical comparisons regarding me to weigh the degree in which other circumstances than the one under consideration had varied, and exercise the best judgment possible as to what weight should be attached to certain changes that have taken place. Obviously, that cannot be put in a broad generalized state-

ment, more than I have. It would, in actual application, have to be applied to the particular case in hand.

Q. Well, would you consider results alone, or would you consider it logical to consider those results in the light of the history of the purposes and methods which accompanied those results?

A. Well, there, again, I think the only answer would have to be with respect to some particular problem. There might be a case in which motives and other matters were pertinent considerations.

Q. Well, I thought we were talking about the basing-point system that you were testifying about. Do you so interpret my question?

A. Well, even as to the basing-point system I would have to know in the particular case what all the circumstances were at the different times, so far as that information was available, and then exercise my best judgment as to what those showed.

45177 Q. In other words, you would feel that you had to know the motives and the purposes and the methods that accompanied the situation that you are analyzing?

A. Well, not necessarily. That might not be necessary. It might be that the mere facts were sufficient in themselves, without going into the motive back of them. Again, I cannot say, as a broad generalization, whether the matter of motive might, under some conditions, be or be not significant.

Q. In your reading of the testimony of some of the industry witnesses in this case you learned some of the historical background; did you not?

A. Well, very little. I have relied for my answers on the historical data furnished in the hypothetical questions.

Q. Do you mean to say that you would want to ignore whatever additional historical facts there are in this record before you gave your testimony on this method of marketing?

A. Well, I supposed it was my duty to answer the questions on the basis of the hypotheses, and I undertook to do that, to the best of my ability.

Q. Now, on page 44721, line 19, when you were asked to compare the present method of marketing with other possible methods in order to determine whether competition has been lessened, you said that the only other

method you could think of would be uniform f.o.b. mill base.

A. Yes. I find the place. Now, the question just
45178 preceding asked me "what other possible marketing method or methods can you suggest."

Q. Yes.

A. My answer must be taken in connection with that question.

Q. That is right.

A. I do not mean that I cannot think of other methods, in the abstract. I can think of one or two others, but methods which will be possible or practicable; having eliminated the zone system and the postage stamp system, I find the uniform f.o.b. mill base the only practical one that I can still think of.

Q. Why can you not think of one in which there is a uniform f.o.b. mill base, with some exceptions, the exceptions being that differentials in price may be allowed which make only due allowance for difference in the cost of manufacture, sale, or delivery, resulting from the different methods, or the quantities in which such commodities are sold?

A. Well, I am not sure that a mere allowance on account of quantities sold would be inconsistent with the f.o.b. mill base. It would, perhaps, be inconsistent with uniform f.o.b. mill base.

Q. Yes.

A. And the reason I doubt very much if that could be introduced is that it would be very likely to lead to complaint on the part of customers who are not getting
45179 equal treatment. You stated that these differentials would be based on the cost of production and other items.

Q. Selling, delivery—

A. Yes, sir.

Q. —and quantity.

A. And manufacture.

Q. Quantity entered into it.

A. And manufacturing, I believe you mentioned also. Now, the determination of the unit cost of any manufactured product is a highly technical and complicated problem in cost accounting, and that being the case there is always the opportunity for some customer to think that these quantity discounts are not properly based on the

cost, as they should be, and that in some way he is receiving an unfavorable treatment as compared with some other buyer, and so far as my knowledge of the cement industry goes, based on hypothetical information, I should think that this might be the cause for lack of customer good will and disturbance, which the mills would wish to avoid.

Q. You think there is no reasonable possibility that industry could be carried on with the uniform f.o.b. mill price, with such exceptions to it as I have just outlined?

A. It seems to me it would present serious difficulties.

Q. Don't you know that there are some industries and some products that are sold with such qualifications?

A. Oh, yes.

45180 Q. Now, on page 44723, when you testified that the result would be ruinous if a mill reduced its mill base to the lowest delivered price it was getting, plus freight, you did not mean to say "plus freight"?

A. No; I think—

Q. The lowest delivered price "plus freight," did you?

A. It must have been minus freight.

Q. In other words, you meant reducing its mill base price to its lowest mill net?

A. Yes.

Q. That that would create a ruinous condition, while it would tend to give the mill a larger share, would it not, of the more profitable home market business?

A. Yes; that effect would tend somewhat to increase the area within which it could sell at a lower price than its competitors, but—

Q. And if it increased the proportion of its business in a more profitable market, how can you say with any assurance that the result would be ruinous?

A. Well, by increasing its business I do not mean it increases its business as compared with the delivered price basing-point system, but it increases it as compared with what its area would be under the uniform f.o.b. mill base, at a higher price; but it may very often happen that a seller can increase the number of units he can sell by a reduction of price and still he would lose because
45181 the increase in the number sold is not enough to compensate for the lower price charged.

Q. Well, is not that a matter of balancing; in other words, there would be two factors there working in opposite directions, and who can predict, Doctor, which of those factors would be the stronger?

A. Well, on the basis of the hypotheses before me, it was my opinion that any mill balancing those factors would see that the loss from a price reduction in its own territory, in order to reach out and make sales in these remote districts, would far out balance any gain it would get from selling more products in its own territory.

Q. Doctor, on page 44723, in lines 15 to 18, you there—

A. Just a minute, Mr. Wooden. My pages are not numbered.

Q. The second paragraph—about the middle of the second paragraph.

A. Beginning at—

Q. "At the same time, since its other competitors had not followed it"—

A. Yes.

Q. You were there deviating from the conditions laid down in the question, were you not? The question posed the uniform f.o.b. mill price, and the industry generally went to that basis.

A. No; that was not the inference. The question 45182 asked me how, in my opinion, it would be possible for the industry to change over the f.o.b. mill base, and I said I did not see how it could be done, except by legislative requirement or collusion, and I demonstrated that answer by showing how I could not imagine one particular mill doing it alone. "Uniform mill base," I take it, means uniform for each mill.

Q. But you are assuming here, are you not, that competitors would not follow that, although it was required by legislative requirement or by collusion?

A. No, no. That is the condition I have eliminated in answering this question. I say that, except by legislative requirement or collusion or agreement among mills, I do not see how it could happen, and then having thrown out of consideration this legislative requirement and collusion I then take the hypothesis that one mill tries to do it all alone, and by explaining how I think that would not work I justify my conclusion that there is not any way in which it could be done except by collusion, since it could not be done by the separate mills acting independently.

Q. Now, referring to page 44724, lines 22, 23, and 24, you say that under a uniform f.o.b. mill each mill would be able to deliver at any point at which its f.o.b. price, plus freight, was lower than some other mill's f.o.b. mill, plus freight, to that same point. What is economically wrong

with a mill being able to keep other mills out of its
45183 territory by making a lower price than others are willing to make?

A. I cannot answer that question because I do not know what you mean by "economically wrong." I have already testified that I do not use those ethical terms in economic analyses.

Q. Well, do you see anything to be said in criticism, from an economic standpoint, of one mill being able to make such a low delivered price that no other mill cares to meet it?

The Witness: May I hear that question read now?

(Question read.)

A. That, to my mind, is just another way of saying the same question, and if I criticize something it applies some standard of judgment that it is right or wrong, or worse or better. I don't know just what you mean by "economic criticism." At least, that is not the way economists would use that phrase.

Q. Well, you were not intending to imply any criticism when you testified as you did in those lines?

A. That was not the purpose of my answer. The question asked:

"* * * what, in your opinion, would be the economic effects of such a marketing method on the marketing area of each producer?"

And in the answer, at the bottom of the page to which you are referring, I am doing the best I can to show what the economic factor would be, and that was all I think I was asked.

45184 Q. I am asking you now whether you think that was the effect, either a desirable or an undesirable effect?

A. I did not testify whether it was desirable or not.

Trial Examiner Norwood: He is asking you now.

The Witness: I choose not to say whether I think it is desirable or undesirable, because—

Trial Examiner Norwood: Well, answer the question, whether you think it is desirable or not desirable, or whether you have no opinion on it.

The Witness: Well, that is what I am saying, that I cannot say a thing is desirable or undesirable, as an economist. If I am told whether it conforms—

Trial Examiner Norwood: You cannot from an economic standpoint?

The Witness: No; we do not use that word "desirable" or that word "undesirable," except in some cases where we may have already set up a very definite standard, and we use the term to discuss the degree to which something approaches a certain specified standard; but the word "desirable," by itself, implies some standard which is not there stated.

By Mr. Wooden:

Q. Under this uniform f.o.b. mill base method, would not the area in which any mill had exclusive sales shift as its price shifted?

45185 A. As the f.o.b. mill price of this particular mill shifted?

Q. Or as the f.o.b. mill price of the mill in the adjoining area shifted.

A. Yes; any change in the f.o.b. price of one mill, other things being equal, might cause a change in the area which that mill controlled.

Q. Would there not likely be improved markets on the boundary lines between the various areas?

A. There might be.

Q. And in those areas there would be competition, too, would there not?

A. Yes. The place where competition would now exist would be just on those border lines between the areas, and, of course, there was competition under the other system there also, but now the difference is that whereas under the basing-point system there was competition at very many other places the competition now is pretty much confined to places along the boundary lines between the territories of the different mills.

Q. Would you not say that that condition where the boundary line would shift in prices would constitute potential competition?

A. Well, that constitutes competition all right.

Q. Would you not say it was potential competition?

45186 A. I would go even further than that, and say there is real competition between mills on the f.o.b. base at the points where they both enter the market at the same price.

Q. And there might be potential competition when they went farther than the boundary line?

A. Well, I do not see how a mill could go farther than

the boundary line on a uniform f.o.b. mill base without lowering its base.

Q. I think it might even do that on some particularly inviting occasion, with a very nice piece of business at stake. Would not that be potential competition?

A. You mean lower its f.o.b. base price on all its business?

Q. Yes.

A. Yes; I can conceive that particular possibility. I take it you mean now temporarily?

Q. It might be temporary.

A. If it is permanent, then, of course, it just means you have a new set-up, with the boundary lines and other conditions the same.

Q. In other words, it would not likely be temporary because of some particular inviting large piece of business, and in consideration of different things, such as cost of selling and delivering?

A. As an abstract theoretical proposition, I would say that that, of course, is possible, but in view of the loss of business in the territory in which his mill base con-
45187 trolled, and in view of the probable loss of customer good will which came from the change in the price, and then a shift back again, it would seem to me that that would not be a very common act.

Q. Now, referring to your testimony on page 44725, where you said that the result would be that in most cases you should think the dealers would find themselves able to purchase only from one mill—do you see that?

A. Yes; I find that.

Q. Why did you assume that the dealers would be able to purchase from only one mill under such conditions in most places?

A. Well, that is largely explained by my evidence just preceding. The only places where there would be new actual competition would be the places that were on the border line between the two districts.

Q. Well, Doctor—

A. And, therefore, in most places, that is all the other places, dealers would find themselves able to purchase only from one mill.

Q. That assumes, of course, there is only one mill at a given place, doesn't it?

A. Well, in all of this I am talking about one mill as

being the base in a certain district. If there were two or more mills right at that certain point then I am regarding that cluster of mills as one mill. I perhaps never made that so clear as I should have.

45188 Q. Well, assuming that one of the base prices covering an important part of the country is, in fact, the base price of eighteen or twenty mills, then your conclusion that in most places the dealers could buy only from one mill would not stand up, would it?

A. No. I meant one mill or one group of mills at that particular place.

Q. Well, that is quite different, whether you can buy only from one mill or buy from eighteen or twenty; isn't it?

A. Well, so far as the point made here goes, it is not so different because these various mills at this one point must, through competition, have arrived at the certain base price, which I would presume would be the same for the different mills, so that the dealers around in this territory which they control have no advantage of the competition of mills from outside that district. That is what I was referring to, and it would have been more clear if I had said one mill or one group of mills at that particular point.

Q. Well, as a matter of fact, it follows wherever there is more than one mill at a given place that under a uniform f.o.b. mill method the dealers would not have to buy just from one mill; isn't that correct?

A. I explained that.

Q. In other words, when you explained it I understood you to agree that they would not be limited to one

45189 mill in such cases?

A. Yes. I explained that in my statement. By "one mill," I meant to imply whatever group of mills were located at that one basing point.

Q. Now, on page 44726, lines 11 to 13, you reached the conclusion that it was probable that prices would be higher to the dealers under the uniform f.o.b. mill system than under the present basing-point system. How do you reconcile that, Doctor, with your testimony on page 44723 that the effect would be to bring about a drastic price reduction?

A. Well, on page 44723 I am describing a condition contrary to fact, which I have set up, namely, the effort of one mill to go over onto the f.o.b. mill basis without any

collusion with its competitors, or without any Government compulsion, to bring them all over.

Now, on this page—

Mr. Bond: Which page?

The Witness: It is page 44726.

A. (Continuing.) Here the answer is to a question going back to page 44724, in which I am asked to assume that the cement industry is on the uniform f.o.b. mill basis. Now, I do not know what made that possible, but I am simply asked to assume that that is the condition, and under that condition it would be my opinion that prices to dealers would tend to be higher than if,—other
45190 things being equal,—it were on a basing point system.

By Mr. Wooden:

Q. Well, regardless of how brought about, whether by collusion or by legislative requirement, the uniform f.o.b. mill system by hypotheses operates to keep out of territory of the nearest mill, let us say, competitors who are not willing to accept as low price as the mill is willing to accept in that territory, the home mill willing to accept?

A. I would not use again just exactly that language. What the result is, that the different mills have such f.o.b. mill prices that with addition to freight you determine boundaries for their different districts, and no mill finds it profitable to go any appreciable distance into the other mill's territory because the only way it could do so would be to reduce its f.o.b. mill price for all of its business, and that is the way I would state that.

Q. And yet you say that a method which would keep out other mills, because the first mill made a lower delivered price than other mills, would result in higher prices than the present system which permits the outside mills to come in the home mill's profitable home market at the same delivered price?

A. No, I—

Mr. Porter: Could I have that question read, please?

Trial Examiner Norwood: Read the question.

45191 (Question and answer read.)

A. No. I declined to answer that question when you first put it because I did not want to make it dependent upon the comparison of the prices of different mills, and in the question as now read I note the word "delivered" price there.

By Mr. Wooden:

Q. Yes.

A. But I understand we are now assuming an f.o.b. mill price basis.

Q. Let us use delivered cost, then, if you don't—

A. To the buyer?

Q. Yes.

A. Oh, well, if that is what you mean, I do not see that there is anything there that conflicts with my testimony which is to the effect that under such a system a great many places which would have the competition of the different mills competing for the business of the dealers now no longer have such competition.

Q. In other words, mills who are now competing at the same delivered price would be shut out by a mill which would have a price low enough to keep them out?

A. Well, that does not describe the situation.

Q. Why doesn't it?

A. Well, I will have to go back over this again. They are kept out because they can't go into the other
45192 mill's territory without a reduction of their own mill base.

Q. Yes.

A. Under the basing-point system they can go into the other mill's territory, meet the base prices and absorb freight. It is not a question of the prices being lower under the one system than they were under the other.

Q. Do you assume that they would be the same?

A. I think that in the long run that prices to dealers under the f.o.b. basis, the uniform f.o.b. basis, would tend to be higher than under the basing-point system, and I base that upon the relative lack of competition.

Q. Can you understand why an industry should be opposed to a substitute system which would bring higher prices?

Mr. Bond: Now, I object, if Your Honor please. Where is there a statement here in this record that this industry is opposed to that.

Trial Examiner Norwood: The obection is overruled. I think he can get his answer to that.

By Mr. Wooden:

Q. Aren't you—

Trial Examiner Norwood: He can assume that and see what is the economic situation.

Go ahead.

Mr. Porter: Your Honor, I am going to make a further objection.

45193 Trial Examiner Norwood: I have already ruled.

Mr. Porter: I know, but I can make my objection. It seems to me that question asks the witness to say why is the defendant defending this case. I do not think that is proper.

Trial Examiner Norwood: The objection is overruled. I do not see it that way at all.

A. I do not happen to know whether the industry is opposed or not, as far as any hypotheses before me are concerned.

Trial Examiner Norwood: Well, as an economist, would you expect them to do so under those conditions?

The Witness: I have already testified I would not expect them to go over to the uniform f.o.b. basis except by compulsion, Government compulsion.

By Mr. Wooden:

Q. You would not expect them to go over to what gave them higher prices?

A. No. I have already explained why they could not do it.

Q. Now, again on page 44726, lines 20 to 25, you are again assuming the case of one mill, and only one mill, being at a given place, are you not, and forgetting such places as the Lehigh Valley, where there are eighteen or twenty?

A. I am not sure that I am forgetting, but I—it seems the way to answer these hypothetical questions is to simplify the problem of simply speaking of one mill in one

45194 place. I have already said that if several mills are in the one place I will regard that group of mills as being one mill for the purpose of this testimony.

Q. Well, in these lines you argued, did you not,— theorized,—that the one mill might very likely take advantage of the situation to raise its f.o.b. price?

A. I thought that might very well happen.

Q. Well, isn't it quite important, then, to consider cases where it would have to consider whether its competitors, maybe eighteen or twenty of them, would go along with him?

A. I have no doubt that would be considered.

Q. Now, referring to page 14727, lines 7 to 9, isn't that true under the present system?

A. I will take a moment to read that answer, if you please.

Trial Examiner Norwood: Yes.

Q. I am referring to your language where you say that—

A. Yes, I find it.

Q. Yes. Under the f.o.b. mill method the prices paid would be the price of that other mill plus the additional freight to bring the cement some distance into the first mill's territory?

A. No. You see under the basing-point system the distant mill will come right in there and sell cement at the price in this place.

Q. At the delivered price?

A. At the delivered price.

45195 Q. But that involves, does it not, the additional freight from the outside mill, or does it?

A. No. It involves freight absorption by the mill that comes in, but it does not raise the price to the buyer.

Trial Examiner Norwood: We will take five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Gentlemen, please come to order.

Proceed.

By Mr. Wooden:

Q. Doctor, do I understand you to say that under the present system that when a buyer decides to buy and does buy from a distant mill as against one that is nearby, that he does not pay any additional freight to get the cement from that distant mill to his destinations?

A. Well, he pays the going delivered price in that place. Those prices cover some freight wherever the cement comes from.

Q. Doesn't he pay the railroad company the additional freight from the distant mill?

A. What do you mean by "additional,"—additional to what?

Q. More freight than if he had bought it right at home.

A. Oh, I don't know how the amount of freight in a particular delivered price compares.

Q. Well, do you assume that the freight from the
45196 distant mill would be no more than the freight from the nearby mill?

A. There might be a case in which that would be true; ordinarily, it would be, of course, more.

Q. And do you mean to say that the purchaser in such case would not pay that additional freight?

A. Well, if the freight from one mill is more than the freight from another mill, and the customer pays just the same price for cement from the two mills, obviously he is paying more freight in one case than he is in another.

Q. Then, that is why I asked you,—referring to your testimony on page 44727, lines 7 to 9,—if that is not what is done under the present system; in other words, paying the additional freight to bring the cement some distance into the first mill's territory?

A. That was not what I mean by "additional freight" here. This additional freight here is additional to the delivered price.

Q. How can there be anything additional to the delivered price?

A. Additional to the former delivered price, which he paid to the mill in that territory. He is now in the position of having to pay a higher delivered price for cement brought in from outside, and it is in that sense that I said "additional freight." Whereas, under the present system whatever freight he pays he has at hand the
45197 salesmen of a number of different companies, both within this district, and offering to sell him, presumably, any amount of cement he wants to take at the going price; he does not have to pay a higher price in order to get cement from the outside district.

Q. What is the advantage to a customer in paying a higher freight to the railroad on a shipment from a distant mill when he could get the commodity at a lower cost of freight although at the same delivered price?

A. Are you still adhering to the hypothesis in this question?

Q. No, I am talking about the same general situation as it now obtains.

A. Well, a buyer does not measure his advantage by the amount of freight that is paid to get the cement to him. He measures it by the delivered price he has to pay.

Q. Well, all you mean by that is that it is no disad-

vantage to the buyer. I am asking you what the advantage to the buyer is.

A. The advantage of what?

Q. In paying a higher freight to bring the commodity from a distant mill when it does not save him anything on the total delivered cost?

A. Well, if he pays the same delivered price there is no question of advantage or disadvantage to him as to the part of the price that goes to cover freight under different circumstances.

45198 Q. Well, doesn't he have to some advantage to induce him to do that? It is not a matter just of indifference, is it?

A. To do what?

Q. To bring the cement in from a distant mill at the same delivered price and yet pay the railroad a higher freight than if he bought it at home?

A. Well, I repeat, he does not pay any attention to the freight as long as—from different mills—he gets the same price.

Trial Examiner Norwood: Well, then, there is no advantage or disadvantage in the difference of freight in buying from the home mill or an outside mill; is that right?

The Witness: Well, there might or might not—

Trial Examiner Norwood: Where he pays the same delivered prices?

The Witness: Yes, there is no advantage before me in any hypothesis that has been laid before me. All I know is here are salesmen of two or more different mills differently located, all paying freight to get into some other territory, and offering a homogeneous commodity at the same price. I do not see why he cares about the freight there.

By Mr. Wooden:

Q. Well, don't economists in their writings, in-
45199 cluding yourself, theorize that that importation from the distant market into the home market will take place only when the buyer sees some advantage in it?

A. Well, no buyer buys anything unless he sees an advantage, and our theorizing, if I understand the purport of your question, is that a distant outside seller cannot get into a particular market unless he may come and deliver

goods at the same price as those who are closer. Now, under the hypothesis that is generally before us here, the assumption is that there is no advantage, and if a dealer chooses to buy from one mill instead of another he has some reason for his choice, which is not before me in any hypothesis.

The point is that he does not pay any attention to the freight in the two cases.

Q. Well; you do agree, do you not, Doctor, that the economic theory of trade between regions is dependent upon that belief of the buyer that he gets an advantage by importing from the outside?

A. No, not at all.

Q. Not at all? All right, we will come to that again. Now, referring to your testimony on page 44728, lines 8 to 25, you there describe what a buyer would do in comparing the relative advantages of deciding whether to buy f.o.b. mill or delivered. Would not a buyer do that same thing and take those same things into account under 45200 the present system, or under any conceivable system?

A. Well, the first thing I say he would consider would be the relative all-over cost of getting the cement delivered. He would, of course, consider the relative—

Trial Examiner Norwood: Off the record, just a minute.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

A. —over-all cost of getting the cement delivered whether he got it on a delivered basis of f.o.b. mill. Of course, under the present system he does not make that choice. He has only the delivered base system to consider, so that that would be out.

By Mr. Wooden:

Q. Under the present system he does not have to worry about making the comparison in the hopes that he will find some difference in the delivered cost from different mills?

A. Well, he generally is not able to buy f.o.b. mill, as I understand, so he would, of course, consider the over-all cost of getting his cement delivered, but he would not consider it as leading to a choice between delivered price and f.o.b. mill.

Q. Well, he would buy whichever way gave him the lowest delivered cost, wouldn't he?

A. What I am saying now, that under the pres-
45201 ent system he does not have these two choices, two ways of buying, so that the particular item here would not be pertinent to a customer's choice under the present system.

Q. Well, he compares the delivered cost from various mills under the present system, doesn't he?

A. He does not compare them with f.o.b. mill prices; that is the comparison I say he would make here.

Q. Well, the comparison he would make there would be in the hope, wouldn't it, that by taking one mill's f.o.b. mill price and adding to it the freight from that mill, or by getting it, going after it with his own truck, he would get a lower delivered cost than from some other mill?

A. Well, that seems to carry an assumption that that would be the lower. It might well that the delivered price would be the lower. What I say is, he would compare the two possibilities and take the one that would give him the cement delivered at the lowest cost to him.

Q. Now, when you finished with your comparison of the steps the buyer would go through under the f.o.b. mill method, running from lines 16 to 23, I would like to ask you which method, in your opinion, would be more likely to prevail when those comparisons were made?

A. That is a very difficult question for me to answer on the basis of hypotheses before me.

Q. Well, at any rate, wouldn't you say that the
45202 one would be more likely to prevail which gave the buyer the lowest delivered cost?

A. Not this one buyer. What I have said is that—I testified to that very question, I think, later. Yes, a little below the middle of page 44730 I testified without expressing an opinion as to which of these methods might prove to be the surviving one; that dealers would probably find one or the other more to their advantage than the other, and as the majority of dealers preferred one method the mills might very likely find it advantageous to cooperate with their dealers and make that the method. I did not say anything about its depending upon the competition of any one buyer.

Q. Yes. All right. I was not using a single buyer, either, except as illustrative.

A. Yes.

Q. Do you see anything too objectionable, from an economic standpoint, to the use of an optional method and allowing the method to survive which the dealers, or the majority of dealers, prefer?

A. Well, again I do not like to answer a question which requires me to say something is objectionable. It is my same old difficulty when terms of that sort are introduced.

Q. Well, I said "economically objectionable"; do you see any?

A. That makes it all the worse, Mr. Wooden.

Q. I was not asking you to pass any ethical
45203 judgment at all, but from the standpoint of an economist do you see anything that you, as an economist, would not think economically sound, to allow the method to prevail which the dealers or the majority of dealers thought they preferred?

A. I am afraid my attitude on that is so hide bound that you cannot think of any word, sound, wise, good, bad, advisable, desirable, that will help me out.

Q. Well, you mean, then, just merely to say that you are unable to formulate or to express an economic opinion on it?

A. Yes, on what is desirable or undesirable, good or bad, sound or unsound, wise or foolish, except—now, I realize I am repeating—except as one might lay down a certain, very precise category of conditions, and say we will agree that when we say "desirable" we mean it approaches this particular thing. Economists sometimes use the term, having set the stage up in that way.

Trial Examiner Norwood: Haven't you testified here to certain things being in the interest of the public?

The Witness: Yes. I can sometimes be in position to do that.

Trial Examiner Norwood: Can't you answer his question from that standpoint?

The Witness: Well, that is very difficult for me also on the basis of the few hypotheses that I have before me
without going out into factual information as to the
45204 various consequences of these two methods.

By Mr. Wooden:

Q. Do you mean, Doctor, you cannot tell us whether in your opinion as an economist it is in the public interest or would be in the public interest to permit such buyers as

wanted to buy f.o.b. mill to do so, and those which wanted to buy delivered to do so, and let the outcome of which of those methods would prevail to be determined by the varying reaction of the different buyers?

A. No, I cannot express that sort of an opinion with any confidence with the knowledge that I have. I have testified that if you did that you would probably have a considerable state of uncertainty for a time, and finally settle down to some particular system; whether or not that would be in the public interest I would hesitate to say.

Q. Well, isn't a competitive market supposed to reflect the different reactions of the various buyers?

A. That would be one way of describing it, including also sellers, of course.

Q. Yes. Well, then, why do you have any difficulty with treating an assumption of letting the buyers have their say, and letting the outcome depend upon the varying reactions of the buyers?

A. Well, because you have asked me to say whether one kind of a competitive system is more in the public interest than another, and—

45205 Q. No, I did not ask you that.

A. Well, yes, you have, I think, asked whether it would be in the public interest to depart from the present system and go over to this optional system. Now, both might be competitive, so the fact that competition expresses the—I do not recall your language exactly—but expresses the reactions of buyers and sellers does not seem to me to help us any.

Q. Now, referring to page 44729, lines 22, 23, 24, and 25, and going over to page 44730, lines 1 to 6, would not those factors increase the amount of bargaining between buyers and sellers?

A. Would you mind reading me the first few words of the answer? You see, my pages are not numbered.

Q. "I think each buyer would have to examine the whole situation"—

A. Yes; I find it.

I do not see that that increases the amount of bargaining between buyers and sellers. It places upon buyers the necessity of making comparisons every time, and puts them to some effort and trouble, which they are not under the basing system put to.

Q. How can you bargain without making comparisons?

A. That is not pertinent to my answer, is it?

Q. I thought it was. I asked you first if it did
45206 not increase the amount of bargaining, and instead of saying that you said it increased the necessity of making comparisons.

A. Oh, I beg your pardon. I first said I did not see how it increased the amount of bargaining.

Q. That is right, but it increased the necessity of making comparisons.

A. I should not, perhaps, have volunteered the last part. Maybe that was not responsive to the question.

Q. Well, do you see how it is possible to bargain unless you make a comparison?

A. Again, I do not see the connection, Mr. Wooden.

Q. Well, whether you see it or not, will you answer the question? The question is very plain.

The Witness: May I have the question read?

(Question read.)

A. Yes, I can conceive of a case in which it would.

Q. Well, you will agree, will you not, that making comparisons is one of the substantial ingredients of bargaining?

A. Not invariably, no. A buyer might have—

Q. Is not that generally true?

A. A buyer might not have a basis of comparison.

Q. Well; a comparison—

Trial Examiner Norwood: How would he bargain? What would he do when he bargains without any basis of comparison?

45207 The Witness: Usually we use bargaining when we do not have competition. When you have one buyer dickering with one seller, bargaining is a matter of matching wits, the seller trying to get the highest possible price, and the buyer trying to get the lowest possible price. The buyer is not comparing this seller's price with that of anybody else, and the seller is not comparing the buyer with any other buyer; so that is enough for me to decide that I do not accept the invariable statement that bargaining involves comparison.

By Mr. Wooden:

Q. Would you say that the buyer is not comparing one seller's price with that of another?

A. No; I did not say that as a general proposition. I

put that up as one possible case in which a comparison might not necessarily be required by bargaining. I think that was necessary to answer your question, that bargaining did not always imply comparison.

Q. Will you not say that comparisons increase the effectiveness of bargaining?

A. No; I cannot make broad general statements like that.

Q. Now, referring to page 44730, lines 16 to 23, you there set forth at great length about different dealers having different facilities and different policies, and
45208 how salesmen would not be certain as to what they could offer, and finally out of that coming a tendency for dealers to lean more to one method than to the other. Again, I will ask you whether you, as an economist, see anything in such a situation that you would say is economically unsound?

A. That puts me in the same difficulty that I have expressed several times before.

Q. Were you not putting it forward here as something that implied an objection?

A. No; I do not think so.

Q. You did not put these things forward on this page as an argument against the f.o.b. mill method?

A. I was not asked to argue about anything. I was asked to tell what, if any, would be the effect of certain causes, and I undertook to express my opinion, to the best of my knowledge, as to what that effect would be.

Q. And did you not express your opinion on the basis that there was something about this situation that you thought was economically unsound?

A. I was not asked about that. I—

Q. Why did you mention these things if you thought they were economically sound?

A. I mentioned them as the various steps in the chain of cause and effect that led to certain conclusions which were called for by Counsel's question.

45209 Q. Do you now say, in answer to my question that the things you outlined on page 44730 are economically unsound?

A. I would have to be excused from answering that question, as I have asked many times from questions framed in that way.

Q. Do you now say, in answer to my question, that the things stated on page 44730 are economically sound?

Mr. Bond: If Your Honor please—

The Witness: Your Honor, I ask to be excused from answering questions which imply ethical or moral or other considerations. I have mentioned quite a list of words—

Mr. Bond: Yes.

Trial Examiner Norwood: Yes. I think I have ruled on that question heretofore.

Mr. Wooden: I just merely wanted to get it in to show there is no escape. In other words, he just does not want to answer.

Mr. Bond: Oh, if Your Honor please—

Trial Examiner Norwood: I think the answer shows for itself.

Go ahead.

Mr. Bond: Without comment.

Mr. Wooden: Yes; I did not mean that.

By Mr. Wooden:

Q. Now, beginning on page 44731, and running for several pages, you testified to the general effect, did
45210 you not, that there was no distinction between competition and price competition, and that all competition was price competition?

A. Yes; I did, adding, however, the qualification that I recognize that these terms are used by some economists, and admitting that I have occasion to use them myself with a limited meaning, which I, perhaps, need not go into further here.

Q. Well, would you say that there is no competition unless there is price competition?

A. Where competition has to do with goods sold for a price, I think that would be true.

Q. In other words, where they are sold for a price there is no competition unless there is price competition?

A. Yes; always remembering the other sense in which that term might be used.

Q. Well, do you merely mean to say, then, there is no competition unless there is no competition? Is that all you mean to say?

A. Well, it comes pretty close to that in view of the definitions which I have given. You see, I have said that when there is competition the buyers and sellers are thinking, on the one hand, of a price, and, on the other hand, of a quantity and quality of a good, and that never do buyers and sellers consider that situation in determining what

action they will take in determining whether a buyer will sell, in determining whether they will make a more attractive offer to buyers or to insist on better terms from
45211 sellers, without considering price, and, therefore, I have said that all competition involves the matter of price, and it is in that sense that I say that competition is price competition, and in the same sense I say that if there was not any price competition there, it would not be competition. I want to make myself very clear in that answer, because I recognize that these terms are used differently by other people, and I have used them myself in a different sense, where a misunderstanding might arise if I did not try so hard to make my present meaning, which is in agreement with my previous testimony, I think, entirely without ambiguity.

Q. Now, if there is no distinction between competiton and price competition why is it that economists give so much attention in writings and in their textbooks to price?

A. Well, price seems to have nothing to do with the question before us, but the simple fact is that price is a matter of the utmost importance in economics.

Q. Would you say that price has nothing to do with the question before us?

A. No; I said your question as to why economists attach importance to price does not seem to me to be pertinent to this distinction, or alleged distinction, in connection with competition and price competition.

Q. Does it not show, in your opinion, Doctor, that economist write so much about price because they do
45212 recognize the distinction between price competition and competition?

A. Well, no; I would not think that was the reason they write about price.

Q. Is it not the theory of price, as economists write about it, that is, the reflection of supply and demand on a competitive market; is not that theory dependent upon the ability to separate the price of a commodity from the incidental service that is furnished with it?

A. No; I think that is just the reverse. It rests on the assumption that in the market the buyers and sellers are considering, on the one hand, the price, and, on the other hand what they are getting for the price. I think you will find no reputable economist whose analysis of these matters does not take account of the quality and the quantity that is given in exchange for the price.

Q. Yes; but that is assumed as being an offset, is it not? In other words, you are dealing with the price for a homogeneous commodity?

A. No. Sometimes you can assume a homogeneous commodity, and sometimes you can assume a non-homogeneous commodity.

Q. Yes; but we are dealing with one here that you call homogeneous.

The Witness: Dealing where?

Trial Examiner Norwood: Well, the things that go along with a commodity are not price; are they?

45213 The Witness: No; they are the other side of the equation.

Trial Examiner Norwood: And price is what is paid for the commodity and the things which go along with it; is that right?

The Witness: Yes; if you want to call that an offset, as was suggested, the commodity and things that go with it are paid for price.

Trial Examiner Norwood: If there is a variation in the sum total of the commodity, price and services, you say that is a variation in price, or tantamount to that?

The Witness: Yes. If I understand Your Honor, a variation in the quantity or the quality of the thing offered, while the price remains the same, would be equivalent to a change in price for an unchanged quantity or quality.

Trial Examiner Norwood: Economists would not distinguish there and show on one side that there is a variation in the commodity, and on the other side that there is a variation in the price?

The Witness: Well, he might distinguish and go to great lengths in describing those two stations. That is where he sometimes brings in this term "price competition," but what he would not do would be to say that one was a different kind of competition and the other

45214 did not involve price.

By Mr. Wooden:

Q. Doctor, do you agree with this definition of price: "The price of anything is the amount of money that would be given in exchange for one unit of it."

A. That is my own definition of "price," and it is an arbitrary definition, which makes the price on the one hand relate to the amount of money received. That definition is

given to facilitate analyses, and thereafter, when I use the word "price" I mean that.

Q. Well, that is just what I meant a few minutes ago. How can economists theorize about price unless you stick to that kind of competition?

A. Well, as a matter of fact, different economists have different definitions of "price" and "value," and if their definitions are workable and they stick to them consistently, they get along pretty well.

Q. Do you think that your definition, the one that I have just read to you, is arbitrary, while the one you are giving in your testimony here is not arbitrary?

A. Well, the point is right here that the sum—

Q. Can't you answer my question?

A. I am got to go to a little length on it.

Trial Examiner Norwood: Let him explain.

By Mr. Wooden:

45215 Q. Go ahead.

A. Some object is exchanged for something in return. Now, we use the word "value" to include all sorts of objects. You can barter shoes for wheat, and we will say the value of a pair of shoes is a couple of bushels of wheat. Then, for our certain purposes we take a price and assume that that is the amount of money.

Now, in my testimony, I have taken the case of sales of cement where the price is partly paid to the selling company and is partly paid in freight to the railroad. Now, that is no contradiction. The price is still the amount of money, the amount of money involved. It happens in this case that the seller has made an arrangement by which part of that money goes to some third party, either on his account or to cover costs which he would otherwise have to meet, but I think that still is consistent with the definition of "price" as being the amount of money which is the consideration for the good.

Now, some economists do not limit their definition of "price" to money. They make it any other consideration. I would not say that there is any error there. It is just a choice, and that is what I meant by "arbitrary." It is a choice of possible definitions.

Q. You now say that "price" is not merely the amount of money paid for one unit of goods, but the amount of money paid for it, plus the services rendered in connection with the sale?

45216 A. I am afraid I don't quite get you. You mean that the good includes also some service and price paid?

Q. And "price" also includes service rendered in connection with the sale?

A. No; I did not mean to say that.

Q. Well, I thought you took the position that "price" was the consideration, the monetary consideration, not only for the goods but for all of the bundle of services accompanying the sale of the goods?

A. Well, accompanying the good. I thought now you said some service accompanying the price. That is what I did not follow.

Q. No; I said the sale.

A. Well, I may not quite grasp your question, but my understanding is this, that on one side is the price, and that is the money consideration, as I use the term. On the other side is something that is exchanged for the price. Now, that is something—maybe a commodity, plus or minus services, and various circumstances of the sale, as you might describe them. I, perhaps, have misunderstood your first question as to that.

Q. At any rate, do I understand that you are putting forward here a definition of "price" that is different from the one you gave in your text, to which I called your attention?

A. Oh, no.

Q. "Price" is still, then, the amount of money received for one unit of the goods?

45217 A. Yes, sir. The only thing to remember is that, when received, it may not be received directly by the seller, but through some other channel, or to meet some other obligation for which the seller is responsible.

Q. And if the price of cement is $2 a barrel, but the seller has offered somewhat different services in connection with that price of $2, what is the monetary price of the cement?

A. The monetary price of the cement, plus these other services is $2, if I understand your hypothesis.

Q. Do you say that the monetary price of cement, as such, is less than $2, then?

A. No; I am not able to distinguish from that hypothesis how much of the $2 goes for cement and how much for the other things that go with it.

Q. As a matter of fact, Doctor, to say that price is made up not only of the commodity furnished, but the varying services that different sellers might offer, makes it impossible to say what the real monetary price is, does it not?

A. That is just what I thought you said a minute ago, Mr. Wooden, but you said you did not. You are now making price composed of some other thing.

Q. Well, I thought you did.

A. No; it is the commodity on the other side of the equation.

Q. You said the price of $2 included all services.

A. No; I said it paid for all the services.

45218 Q. It paid for all the services.

A. Yes.

Q. Well; price includes the varying services—

A. No; I must interrupt you, Mr. Wooden. I cannot answer that question that price includes services. Price includes money, according to my definition. The services are on the other side.

Q. Well, is not the price on the side of the seller, as well as the service?

A. Yes; price is on both sides, but price is on one side of the equation and the other commodity, with whatever goes with it, on the other side of the equation. I am not talking about the seller's and buyer's side, but the two sides which any exchange presents.

Q. In other words, the price paid for the goods, plus the services rendered in connection with them; does it not?

A. Yes.

Trial Examiner Norwood: Now, suppose that some competitors render services and other competitors do not; service "X," for instance. They both sell at the same price, that is, the same money value.

The Witness: Yes. You are assuming also, Your Honor, that the commodity is homogeneous?

Trial Examiner Norwood: The commodity is homogeneous and all these other things are equal.

45219 The Witness: Everything equal except one of the—

Trial Examiner Norwood: And everybody is well informed.

The Witness: Except one seller is offering more in the way of service than another.

Trial Examiner Norwood: Yes; and the same amount of cement changes hands.

The Witness: Well, that is—

Trial Examiner Norwood: Now, those sales are at the same price.

The Witness: That would not happen, of course, if these differences in services were very substantial, because that presents just—

Trial Examiner Norwood: I am asking you to assume that they do happen. The buyer receives one service at one time and another service at another, from different people, but he pays the same price for both. Would there be a different price there or the same price?

The Witness: I think the sensible way to describe that would be to say that the price was the same, but there happen to be small differences in services between the sellers, which are not great enough to lead all of the buyers to go to that one seller.

Trial Examiner Norwood: Well, I am assuming that there are substantial differences in the services, 45220 except that at some times he wants them and at some times he does not.

The Witness: Well, I am afraid we are getting into hypotheses which contradict themselves there.

Trial Examiner Norwood: No; I do not think so.

The Witness: You asked me to assume a homogeneous commodity.

Trial Examiner Norwood: Yes.

The Witness: And sold by the same sellers.

Trial Examiner Norwood: Yes.

The Witness: You mean by different buyers?

Trial Examiner Norwood: Yes.

The Witness: Or, paid to different sellers, and some differences in the services that go with the commodity. Now, with all those assumptions, the explanation is that those differences are not important enough to lead the buyers all to go to this one seller who gives them the better service.

Trial Examiner Norwood: You are to assume that they are important enough to lead the buyers to go from one to the other, but he makes the sale, anyway. There are many circumstances; he might have more than the other would supply. In one case, service "X" would be present and in the other case service "X" would be absent. He pays

the same amount per barrel for each. Now, are those
45221 sales made at different prices, or not?

The Witness: Well, there, I want to repeat that that condition is one in which these differences are not great enough to induce all—

Trial Examiner Norwood: Please do not assume anything like that.

The Witness: But I have to, Your Honor.

Trial Examiner Norwood: Tell me whether there are two prices or one price, or say that you cannot tell; one of those three.

The Witness: Won't you let me follow up that one matter, because it changes—

Trial Examiner Norwood: No, I do not want you to change the assumption that is involved in my question.

The Witness: Well, it affects the whole answer.

Trial Examiner Norwood: Yes; maybe you cannot answer it or may you can answer it one way or the other. Tell me which it is.

The Witness: I am glad to answer it any way that I can get it before myself.

Trial Examiner Norwood: You want to answer it by changing the supposition.

The Witness: No, I do not, Your Honor. You asked me to explain a situation under a certain hypothesis which you laid down, and which I accept—

45222 Trial Examiner Norwood: Yes.

The Witness: And my answer is that as long as you have buyers still buying from different sellers, those variations cannot be important enough to induce them all to go to one seller. I cannot escape from that.

Trial Examiner Norwood: That does not answer my question.

The Witness: If they were so important as to induce them all to go to one seller, then we would no longer have any question about the same price. It would be just one sale, and, of course, the price would be all the same.

Trial Examiner Norwood: Do you think that answers my question?

The Witness: I think it gets the conditions before us. Now, under those conditions—and I think I have already answered part of it—I should say that we had the same price for the same thing, so nearly the same that the differences did not enter into—

Trial Examiner Norwood: They are not the same. One is a barrel of cement, with service "X" attached. The other is a barrel of cement, with service "X" absent, both bought from different people, and the same amount of money paid for each barrel. Is there a different price or are both barrels sold at the same price?

The Witness: I say it is the same price, because
45223 those differences in services have not been enough to lead the buyers to desert one seller and go to another; and, therefore, they are not material in the determination of price.

By Mr. Wooden:

Q. Suppose they are substantial enough to lead one buyer to go from one seller to another, what would your answer be?

A. Then, of course, you would change one or the other assumptions, as I see it. Then you have a condition—

Q. Would your answer then be—

Mr. Bond: Let him finish.

The Witness: Let me finish my answer, Mr. Wooden.

Mr. Wooden: Yes.

A. You change one of the assumptions before us, because then all your buyers desert the seller who makes the less favorable terms, and go to the one who makes the more favorable, and they no longer have several dealers, when they have only one seller.

Trial Examiner Norwood: That is denying the assumption, there, Doctor.

The Witness: That is the consequence of Mr. Wooden's assumption. Mr. Wooden asked me to assume—

Mr. Bond: Let him finish his statement, Your Honor.

Trial Examiner Norwood: Go ahead.

The Witness: Mr. Wooden asked me to assume what I did not assume in answering your question, because
45224 it was not required. Now, he asked me to assume that these differences in the services are so substantial that they compel all the buyers to leave the seller with the least favorable terms and go to the one with the most favorable.

By Mr. Wooden:

Q. No; I did not ask you that. I asked you to assume that the differences in services are substantial enough to

lead the buyers to compare the offers of the respective sellers, including their prices.

A. Well, that would be—

Q. Then, tell me what price is, assuming that it was $2 here, disregarding services?

A. Yes. That puts me right back where I was. You have to answer that on two assumptions.

Trial Examiner Norwood: Doctor, the question goes to whether or not there are two different prices, not under these other circumstances that you have been discussing.

The Witness: I think I have already answered that.

Trial Examiner Norwood: In other words, "B" is the barrel of cement; "X" is the service. Now, "B" plus "X" equals $2. In the other transaction "B" equals $2. Is that the same price or a different price?

The Witness: Well, I have already answered that, Your Honor, by saying that if that difference is so slight
45225 that it still leaves the buyers buying from the different sellers—

Trial Examiner Norwood: Well, we are assuming that the differences are not slight.

The Witness: But you do assume that the buyers are buying from two or more sellers.

Trial Examiner Norwood: Is one buyer buying from two sellers?

The Witness: Now, you have an assumption of only one buyer?

Trial Examiner Norwood: Yes; one buyer buying from two sellers, and just two barrels of cement. One of them has but one barrel to sell, and he gives this extra service to one buyer, but he does not give this service extra to the other buyer, who had one barrel to sell. The buyer needs two barrels; he buys both of them, and he pays $2 for each one. In one case he gets "B" plus "X," and in the other case he gets "B." Is there a different price for the two barrels?

The Witness: My answer is he pays the same price, because "X" is so small that it is immaterial in the making of the price. Otherwise, it would have led to buy both of the barrels from the fellow who gave him "X."

Trial Examiner Norwood: I did not assume that the service is small. It is a substantial service. It
45226 might amount to the delivery of the barrel 50 miles away; whereas, in the other instance, he had to

send his truck, where the service "X" was absent, in order to get it.

The Witness: Well, I do not have to say how substantial this "X" is. All I say, on your own hypothesis, is that if this man buys from two sellers, "X" was not important enough to lead him to buy only from one seller. I cannot escape that conclusion.

Trial Examiner Norwood: He was not decided by any consideration of the presence or the absence of the cost of "X."

The Witness: Well, it did not influence him.

Trial Examiner Norwood: He is doing that because one of the sellers could not give him both barrels.

The Witness: Well, you are putting that also in it? That is still another hypothesis.

Trial Examiner Norwood: No; that is all included in my supposition that "X" was substantial.

The Witness: Yes; but now you are asking me to assume that one—

Trial Examiner Norwood: One furnishes it and one does not.

The Witness: Yes; and that one seller can only provide one barrel. Then, of course, the buyer goes to that one and buys the one barrel, and then goes to the other
45227 one and buys the other barrel, and if that difference is substantial he is paying two different prices.

By Mr. Wooden:

Q. Although the monetary amount paid is the same?

A. Although the monetary amount paid is the same, but the quantity in return for the money is different. The price for you to find is the amount of money for the unit, and the unit is identical.

Q. Then, Doctor, would you say that where the delivered price is in terms of money are identical per barrel, that the services rendered are different, that the delivered price is not identical?

A. I would say that if the differences in the service were substantial enough so that they led the buyers to all flock to the seller who gave him the superior service, and that I think relates very definitely to the hypotheses before us. There are certain services are so small or are so temporary, or are so lacking in possibility of predicting their continuing as such as between different sellers, that they

won't lead the buyers to flock all to one seller, and even those services I think we have to ignore as determining the amount of the price.

Q. Well, let us take those services that were outlined to you in a hypothetical question, and which formed the basis for one of your answers. Assume that the de-
45228 livered price was the same, and that those services were rendered in different degrees by different sellers,—do you know what I mean there, that long hypothetical question?

A. I would be glad if you would tell me what page it is on.

Q. Oh, that gave such matters as service on bags, returning bags, and engineering service, free water, all that sort of thing; don't you remember that?

A. Yes. I do not remember all the details of it.

Q. Well, just take those services into account and assume that the delivered price from all the sellers involved is $2 a barrel, but that some of them render some of those services and others do not, and that those who do render them in varying degrees, is the price of cement at that destination $2 or is it something else?

A. I think that my answer was that under those conditions there would be a tendency for those various services to become uniform, the same as the cement is homogeneous.

Q. Can't you tell me whether the price is $2 under those conditions?

A. No, because I think those conditions would not last: those services would tend to become uniform. Now, if you want to name certain services which do not become uniform, and I can see that there are such, because they are not such definite and regular things, as the return of bags, and that sort of thing, but have to do with the
45229 personality of the salesmen, with the incidental favors which one salesman gives now and another gives another time, those might be such that they would not ever become uniform, and yet would not be sufficient to lead any one dealer to turn all of his business to a particular seller.

Now, if those are the kind of services that you had in mind, then I would say that the price covers the cement and the regular services which are substantially uniform regardless of these temporary and fluctuating and uncer-

tain ones which do not serve sufficiently either to cause a change in price or to drive all of the buyers to one seller who gives them the most favorable terms.

Q. Well, Doctor, take a situation where the uniformity in service has not come about, and the price delivered is $2 a barrel and at that particular time they are offering different services, I want to know if the price is $2 a barrel or is if something else?

A. If the services are substantially different, and $2 is paid for a barrel of cement, plus some important services here, and without them here, then I would say that there is a different price for those different—for any unit you want to name.

45232 Washington, D. C.,
Wednesday, October 2, 1940.

45233 FRED R. FAIRCHILD thereupon resumed the stand and testified further as follows:

45234 By Mr. Wooden:

Q. Now, continuing, Doctor, with our considera-
45235 tion of the relations between price competition and competition in general, including service competition, is it your position that if competitors had an agreement upon the price of their commodity and they had adhered to their agreed price, but that they gave varying services in connection with it, there would still be price competition?

A. Yes; that is consistent with my position, that all competition in the sale of goods, in which the buyer must give attention to price, is price competition.

Q. In your view, would such an agreement put any restraint upon price competition?

A. Such an agreement would restrict the area or channel within which competitive acts could take place, but I would not say it would put restraint upon competition.

Q. Would it put restraint upon price competition?

A. No; I do not make that distinction.

Q. Would not such a position tend to make it almost impossible for the philosophy that your own text books expound regarding the importance of price competition, to be carried out?

45236 A. My textbooks, I think, are consistent with my testimony, to the effect that all competition is concerned with price. I have already said that in my textbooks I have used the phrase "price competition" to describe a situation, or to call attention to the fact that at some given time the inducements offered to buyers are in the way of price considerations, whereas, in other conditions, the inducements offered may be something else. I think I have fully explained that, and if now you ask if the emphasis which my books place upon price competition is inconsistent with the position that all competition is price competition, then I answer that I see no inconsistency.

Q. Have you written in any of your books to the effect that the great majority of people will seek to buy where prices are lowest?

A. I may have written that.

Q. You agree with that, then, do you?

A. Yes; I agree with that.

Q. And if you so wrote, would you say that you had something other in mind there than the monetary sum received for one unit of the goods?

A. Well, when I say that the majority of people tend to buy where prices are lowest, I am sure the context would show that they also take account of the quality and quantity of the good, and if they are buying at places where prices are lowest, the assumption in that connection
45237 is that we are considering a homogeneous article. The definition of "price," which I gave in my book, is the one which I think I have adhered to throughout all of my writings.

Q. Well, the monetary sum per unit of goods takes care of the quantities; does it not?

A. The point I made was that if the unit is different, of course, that has to be taken into account in considering the price, and also if the quality is different. What I mean is that the buyers might pay a higher price rather than a lower price, if you are not thinking of the same commodity. They are getting a better quality for a higher price. You gave me one sentence without any context, and I am sure, if it was from my writings, you will find that the context made it clear that buyers were comparing the same article offered at different prices, and chose the lowest price.

Q. You will find the statement that I read to you on

page 172 of your textbook entitled "Economics," the last edition, apparently, in 1936; is that correct (handing book to the witness)?

A. Where is that particular sentence, please?

(Mr. Wooden indicated in book.)

A. Oh, yes. Yes; the whole context of this book makes it entirely clear that when people buy where prices are lowest, they are comparing the price with a higher
45238 price for the same thing, obviously.

Q. But you do not see anything right in that connection, do you, about the varying services that might attend the price or accompany the price?

A. This analysis did not require going into various services, because we start right out with assuming a certain commodity offered in return for the price. I think the context will show clearly enough that whatever advantages went with that article were included.

Q. Well, in theorizing about price in a market as being the reflection of the forces of supply and demand, economists do not discuss the varying services that may go along with the price; do they?

A. When they do not discuss them, they assume them.

Q. They assume them to be the same?

A. No; they assume that whenever a commodity is sold, the reference to the commodity itself includes whatever advantage goes with the ownership of that commodity, or its delivery. Sometimes they will assume that those are the same, and in most discussions of the operations of the laws of supply and demand I think economists do start out by assuming articles which are homogeneous in all respects. That does not—

Q. Equal services?

A. Yes. That does not mean that the same laws do not apply to other conditions in which there are differences.

45239 Q. Unless they assume equal services, the theory would not be very dependable; would it?

A. Yes; the theory would still be dependable. It would have to include, as it does, I think, in my books, further elaboration to take account of differences in service.

Q. Well, Doctor, are you suggesting here that it would be in the public interests as a reflection of sound economic theory for the public to accept the theory that there is no distinction between price competition and competition as

a whole, and that so long as you have any form of service competition you still have price competition?

A. I do not see that that has any particular relation to the public interest. You are asking me to give attention to certain principles or theories of the science of economics. Now, the whole question, I should think, was whether those theories are true or not. If the theories are true, I cannot see why it is not to the public interest to accept them.

Q. Well, you have been testifying here that this method of marketing is in the public interest, and in support of your testimony you advance the theory that there is no distinction between price competition and other competition. Now, do you say that your theory about the lack of distinction between the two would be in the public interest if it were adopted as the basis for public policy?

A. Do you mean legislation?

45240 Q. Or administration of existing legislation.

A. Why, yes; if this theory is true, as I believe it is, I cannot see how conforming to this theory of the operation of economic forces is going to be injurious to the public interest any more than conforming to the law of gravitation or any other scientific principle is going to injure the public interest.

Q. You would advocate, then, in the public interest, that there be no distinction drawn between price competition and other forms of competition?

A. Well, I do not feel that, as an economist, I am called upon to advocate what should be done in the public interest. Furthermore, I remind you that, in the public interest, it may be desirable to use the term "price competition," and the term "non-price competition," to signify these particular situations, which I have already said, I think, is permissible, and which I have shown in my own writings; but I do not feel that I, as an economist, am called upon to say what theories of economics should be adopted in the public interest. That is not the way we look at it. Our purpose is to investigate the subject and develop true theories. Having developed those true theories, I see no reason why public policy would be injured if, in administration and legislation, a recognition of those theories were made.

Q. Well, you have been testifying here, have you not, that this method of marketing is in the public in-

45241 terest, and have you not been supporting your testimony with the theory that there is no distinction be-

tween price competition and other forms of competition, and I am asking you if the latter, when taken into account with the former,—that is, I mean the question of public interest,—is such that you advocate that theory in the public interest?

Mr. Bond: Your Honor—

Trial Examiner Norwood: He has answered that question.

Objection sustained.

Mr. Wooden: I cannot recall any "yes" or "no" answer, but I will pass it.

By Mr. Wooden:

Q. Doctor, do you agree with this statement:

"The market with its scale of prices does not always give the information which is needed as a basis for rational economic conduct."

A. Well, there might be markets which did not give that information.

Q. I take it that you agree it does not always give that information; the market does not always give that information?

A. Yes; we describe market conditions according to whether buyers have or do not have full information, or whether sellers have or do not have full information, and there might be a market situation in which the information was incomplete.

45242 Q. Would you agree with this statement, in the same connection:

"All such valuations outside the market would come to expression in money terms or pecuniary valuations which lie beyond the sphere of price."

A. No; that seems to be a rather vague statement, which I cannot subscribe to without seeing a good deal more of the text in which it comes.

Q. And would you agree with this statement, in the same connection:

"The very fact that market value is that a phenomenon which occasions a necessity for these further valuations proves that they are independent."

A. I do not get the purport of that without seeing its context.

Q. Well, you are unable to say whether you agree with it or not?

A. Yes; without seeing the context in which it comes.

Q. As I understand it, you agreed with the first statement that I read, but you cannot agree with the second and third?

A. The first statement, as I qualified my answer, is one that I can accept, but the other two are not ones that I can understand sufficiently without more of their context.

Q. Now, referring to your testimony on page 44700, where you distinguish between an act of price competition and a condition of price competition, and where you
45243 presented the analogy of two armies drawn up in battle array, but without engaging in acts of war, would you class that situation or condition as potential competition rather than as an act of competition?

A. Well, perhaps not precisely. I characterize that situation as a state of competition, because competitors are watching each other and are preparing to take action at any moment as occasion may indicate to each one's judgment that such action is advisable, whereas potential competition, I think, would rather be competition which is not now present, but which might be brought in by some change of circumstances. I am drawing that distinction without asserting that economists generally would draw that precise distinction. As I think of its use in my own writings, I think there would be that distinction.

Q. You would not call that active competition?

A. Call what?

Q. Where the parties are watching each other, as distinguished from being actually engaged in competitive warfare?

A. Well, there is a question of what exactly you mean by "active," and to avoid any argument about what "active" means, I would say it is a state of competition not accompanied by overt acts. That, I think, is what I meant to say in distingushing a state of competition from competitive acts.

Q. A sort of armed truce?

45244 A. Well, that, of course, is an analogy.

Q. Yes; you use the analogy of two armies.

A. Well, no, that is not quite right. These armies face each other not in a state of armed truce at all.

Trial Examiner Norwood: Well, you indicate there the existence of economic forces.

The Witness: I think that is a fair statement. I indicate—

Trial Examiner Norwood: In other words, it is being felt like the effect of the law of gravity, so that it influences economic action; is that the idea?

The Witness: Possibly. You might mean to suggest, Your Honor, that the force of gravity is in operation all the time, even though bodies are not moving. I think that is an excellent illustration; but the analogy of the armed truce is not quite accurate, because a state of competition in which no overt acts are going on does not imply any truce between competitors, armed or otherwise.

By Mr. Wooden:

Q. Would you say that two armies that face each other without indulging in any overt acts, over a period of years, were really and truly at war with each other?

A. Unless they had some reason, some evidence, to indicate the contrary.

Q. Well, would the fact that they did not indulge 45245 in overt acts for a long period of time be any evidence to you?

A. It would not be sufficient. I would have to have a good deal more, complete hypothesis, than to decide in any particular case whether or not two armies were or were not at war.

Q. It would be some evidence, though?

A. It would be evidence on the question, but it would not lead to any conclusion.

Q. Would you say that when an army follows its leader that its members are, nevertheless, acting individually and competitively?

Mr. Bond: Well, now, if Your Honor please, it is an interesting analogy, as far as the Professor went—

Trial Examiner Norwood: I think we have carried it far enough.

The objection is sustained.

Mr. Wooden: Of course, Your Honor; that simply means a witness can use an analogy of two armies, but I cannot explore it on cross-examination.

By Mr. Wooden:

Q. Now, on page 44741, you testified that you would expect that if there are delivered prices in an industry 45246 it would be necessary that those prices follow some pattern. Does your answer there apply to other kinds of prices than delivered prices, also?

A. Well, the only other kind of price that I think of in connection with the hypothesis here would be uniform f.o.b. mill price. There prices would, of course, follow a pattern.

Q. Well, is it your testimony that prices under any method of selling must follow a pattern, or that only in the case of delivered prices or uniform f.o.b. mill prices they must follow a pattern?

A. Well, my testimony was directed only to a question relating to delivered prices.

Q. Well, is it necessary for other prices to follow a pattern?

A. I would not be able to say that there is not any industry in the world which could not exist with a price system that did not follow a pattern, but that is quite apart from my testimony here.

Q. Well, haven't you been putting the cement industry into the category of a pattern when you applied to it the economic theory of concepts regarding competition in a market?

A. Well, that has only very indirect relation to the matter of a pattern. The only connection in which I was—in which I testified to anything about a pattern I think was right here in answer to this question, as to
45247 whether it would be practical for an industry that had delivered prices to operate without some sort of a pattern.

Q. Is there any pattern that a freely competitive market follows?

A. Well, freely competitive market is a market condition within which different selling methods may operate, and I think that that pattern relates to the selling method rather than to the freely competitive market.

Q. You do not think a freely competitive market follows any pattern; is that right?

A. I do not think that would be the way to describe it, no. There are all sorts of freely competitive markets dealing with all sorts of different things, and in which all sorts of different selling methods are followed.

Q. Now, on page 44744, lines 19 and 20, you again refer to the one essential of the different sellers and the buyers having a very large degree of information.

In your view is it essential that the buyers have a very large degree of information about the operation of the basing point system itself?

A. The question—

Mr. Bond: You don't mean as a factual witness, but you mean the hypotheses?

Trial Examiner Norwood: He wants to know what he means by information here, what that information 45248 includes, the necessary information includes.

A. I was answering the question whether a method of policing were necessary to operate a method of selling by basing points and delivered prices, and said that it was not; what was essential was this knowledge by sellers and buyers.

By Mr. Wooden:

Q. My question is based on that.

Mr. Bond: May we have the question read?

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: I think you must make a direct answer to that, Doctor, if you will.

A. Yes, I think that the buyers would have to have a considerable degree of information.

By Mr. Wooden:

Q. About the basing-point system itself?

A. Well, that was not the—

Trial Examiner Norwood: Well, would that information be included in what you consider necessary information?

The Witness: What I included as necessary information was information about the conditions of the market, about prices, about the quantity and quality of product, and so forth.

By Mr. Wooden:

Q. Do you include the basing-point system 45249 among those things?

A. I think the buyers would naturally have the information under those conditions, but—

Q. Do you think it is essential information for them to know about the basing-point system?

A. Well, if they knew these other things I specified, I would not say it was essential for them to know about the basing-point system.

Q. You would not think that would be important for them to know about the basing-point system?

A. I think they would almost certainly know about it if they had the other information I have described, but my answer was in terms of that other information rather than information about the basing-point system.

Q. Now, referring to page 44746 where you gave a definition of cross-hauling, line 11. Now, you defined it there, as I understand it, merely that two mills shipped in opposite directions, and that the shipments overlapped or passed each other somewhere.

A. Yes, approximately so, and at about the same point of time.

Q. Would you reject the definition if it were broadened to include shipments that regularly and recurrently pass each other in opposite directions from different mills and went on right into the home towns of the re-
45250 spective mills and beyond on the other side?

A. Well, as I understand, you are describing a situation in which there still would be cement passing in two opposite directions from two different mills, over approximately the same route, and approximately the same time, so that it seems to me you have described a situation which falls within my definition.

Q. You recognize, then, do you, that cross-hauling may involve the shipping regularly from one mill to another mill's town, and that second mill shipping back to the first mill's town?

A. Well, that is a factual matter, I do not know whether that actually takes place or not.

Q. You recognize it as a form of cross-hauling, however?

A. If it did take place, I would consider it a form of cross-hauling if it is over approximately the same route and substantially the same time.

Q. Do you say that it is a natural, normal economic phenomenon under conditions of competition for a homogeneous product to be cross-hauled to the extent that I have just indicated; that is, back and forth between mill towns?

A. Well, I would say that it is natural under certain competitive conditions for cross-hauling to exist. I can't be sure that the extent to which you have described it is natural or not.

45251 Q. Well, would you say that it has any— What relation would it have to economic theory that the normal course of trade is from surplus areas into deficit areas?

A. Well, that is a general principle which I think is correct, but certain conditions may be such as nevertheless to lead to what we have called cross-hauling.

Q. Yes, but aren't they unusual conditions regarding a homogeneous product?

A. No, sir; I think the conditions that have been set forth before me in hypothetical questions may not necessarily be unusual, whether they are as a matter of actual fact unusual or not is, of course, a factual question.

Q. Well, don't economists theorize that the normal and natural course of movement of a homogeneous product is from a surplus area to a deficit area and not vice versa?

A. Yes, I think I can say that we arrive at that general conclusion as a broad general statement, but we do not deny circumstances in which it may be natural for there to arise a certain amount of cross-hauling. Any such broad generalization is pretty sure to require some qualification and recognition of some exceptions.

Q. You would want to know,—wouldn't you look upon it as something like water running up hill and want to know the reason for it?

A. I would not look at it like water running up hill, because that does seem to be an unnatural thing.

Q. Well, it isn't unnatural if you can find out the cause for it; it is not unnatural if you can find out the cause for it, is it?

A. Well, nothing is impossible if you are told as a matter of fact that it is taking place and it is explainable, if you are told the cause, if that is what you mean.

Q. You would look there for some artificial cause to find it running up hill?

A. Well, I would look for some cause.

Q. That overcomes the natural and usual result?

A. Well, some cause that makes the result in this particular cause an exception to the more common result under some general statement of principle.

Q. And what causes such would you find in the cement industry as you have had it described to you in hypothetical questions?

A. I think I have testified as to that, as to the hypothetical conditions in the cement industry which would seem to me to make natural the development of the basing-point system.

Q. And create a movement of goods somewhat different from what you would expect under normal conditions?

A. No, sir; I do not say that the basing-point system is any less normal than other conditions.

Q. Not even in the respect of cross-hauling?

45253. A. No, simply different results and different conditions, all of which may, so far as the hypothetical picture before me is concerned, be quite normal.

Q. Now, referring to page 14748, line 23, where you testified that with great, extreme difficulty in measuring the exact amount of cross-hauling. Being unable to measure, how can you say as you did on line 12 of that same page that it was no more important than other wastes?

A. Well, that was a highly qualified statement. I said that I, reading the whole answer, that I thought that the relative importance of different wastes depended upon the amount of cost involved rather than the nature of the waste, so that if I were asked whether cross-hauling were more or less important than any other form of waste I would inquire what is the cost of cross-hauling compared with other costs, and base my decision upon that, and that, excepting in the matter of the amount of cost involved, cross-hauling is no more important than another to arrive at that conclusion. I do not have to have any method of measuring the cost of, or the amount of cross-hauling.

Q. To measure quantity degree, however, you would, wouldn't you?

A. Well, I say I do not have to measure it quantitatively in order to answer the question as put to me.

Q. So, then, you were measuring it qualitatively

45254 rather than quantitatively?

A. Well, I was not measuring it at all. I do not know what you mean by measuring a thing qualitatively. That does not mean anything to me.

Q. You said it was no more important than other wastes. Weren't you making the measurement quantitatively or qualitatively?

A. No, I was making a comparison as to the two things.

Q. Do you say that waste which may result from collusion is no more important than a waste which may result from competition?

A. Well, as regards the mere matter of the waste, the only question is how much is waste, and if that is what I am asked about I would say that the origin of the waste is not material.

Q. In other words, the nature of it is not material, only the quantity of it; is that it?

A. Not material to measuring the importance of the different wastes as wastes.

Q. In other words, the nature of the waste is not important, it is only the quantity of it, the relative quantity; is that right?

A. The relative cost involved. I am talking only about waste, and the way you say one waste is more important than another is to compare the costs involved.

45255 Q. On a quantitative or qualitative, or on both quantitative and qualitative basis?

A. You compare costs on quantitative basis.

Q. Didn't you say that was impossible to do here, or very difficult to do?

A. I said it would be very difficult to measure the amount of cross-hauling.

Q. So, then, when you said it was no more important than other wastes you were putting it on a quantitative basis rather than qualitative?

A. Well, I can only go back to my previous answer, that the measure of the importance of waste as waste is the measure of the quantity of the cost involved.

Q. And not on the qualit, or nature of the waste?

A. The quality or the nature of the waste is important as it affects the cost resulting.

Q. Well, again, will you say that waste resulting from collusion is no more important than the same amount of waste resulting from competition?

A. Yes, I would so far as the mere measurement of the waste is concerned. I am not going into the relative merits of competition and collusion at all.

Q. Now, beginning on page 44749, you began a discussion of various factors to consider, which the economist should consider in deciding whether competition
45256 exists in an industry, and the first item you took up was the reasonableness of price and its relation to cost. Did you assume anything in any of your answers regarding the reasonableness of price and its relation to cost in this industry?

A. This was a general question relating to industry in general.

Q. Yes.

A. And I did not answer it with respect to assumptions as to any particular industry.

Q. You did not assume anything about the reasonableness of price in relation to cost in the cement industry, then?

A. No, I did not make any such assumption in answering this question.

Q. Then, did you omit a basic factor in the testimony that you gave? You said that the basic question—

A. I do not quite understand that question, Mr. Wooden.

Q. Well, beginning with line 11 you said that the basic question you would ask first was with relation to price and cost, whether they were reasonable.

A. Yes, that is correct.

Q. Then, you omitted the basic factor in your testimony because you did not make any assumptions about that one way or the other?

Mr. Bond: Do you mean in his other testimony?

The Witness: What particular answer do you
45257 refer to?

Mr. Porter: Your Honor, I object. The witness has made no assumptions in his testimony. He has answered questions on the assumptions put by Counsel, I object to this question because the witness has made no assumptions.

Trial Examiner Norwood: Well, I think we came across one assumption he made.

Mr. Porter: He has only answered questions on the basis of assumptions.

Trial Examiner Norwood: With respect to common knowledge there, and he made some assumptions yesterday in reply to—

Mr. Porter: That is not this question.

Mr. Wooden: Your Honor, the witness has just testified that he made no assumptions regarding the relationship of price and costs in this industry.

The Witness: In answering this question.

Mr. Bond: In answering this question, he said.

By Mr. Wooden:

Q. Did you make any in any of your testimony?

A. Not that I am now aware of.

Q. No, I don't think you did, either.

A. But I would have to answer that question specifically with respect to a particular question.

Mr. Wooden: Now, Your Honor, the witness here
45258 says, I am calling it to your attention that that is a basic question that he would first ask, and so I am

asking him if he did not omit a basic factor in his testimony.

The Witness: Well, my testimony—

Trial Examiner Norwood: I will overrule the objection and ask the witness to answer the question.

A. In none of my testimony, as I recall, was I asked whether the cement industry was a competitive industry or not, as a matter of fact. I was asked to reply to certain questions based on certain hypotheses, as to whether or not those conditions were compatible with a state of competition. That is an entirely different matter from what I am asked about here, which is to lay down the considerations which one would have in mind if he were inquiring whether, as a matter of fact, certain industry was competitive or not.

By Mr. Wooden:

Q. Well, now, you discussed here at some length about these various factors, including the reasonableness of price and reasonable relation of price to cost and profit, and so on. How would you, as an economist, go about determining what was a reasonable price in an industry apart from a competitive determination of price?

A. I do not quite understand the significance of reasonable price apart from a competitive determination of price.

Q. Well, how would you go about determining 45259 whether there was a competitive determination of price by a consideration of the prices and the relation of prices to cost and profit?

A. Well, that would be a very elaborate investigation requiring examination of products and their qualities, cost of production, prices and all. All of that is embraced in this first specification and answer to this question.

Q. Assuming that you had unlimited information about prices and the cost of production and the profits, how would you as an economist determine what was a reasonable price in relation to costs and profits?

A. A reasonable price would be such as led to the production of the goods which the people wanted and their delivery sale to the consumers at a price which covered the cost of production in the long run, and was not so much above that cost as to be out of line with prevailing or customary rates of profit when taken into account, the situations of this particular industry.

Q. Whose account of production would you base it on?
A. On the producer cost.
Q. Which producer's cost?
A. Not necessarily any one.
Q. Would you take an average?
A. Such investigation would have to take account of the various producer's costs.
Q. You would take average cost?
45260 A. That would be some significance. I would not base it solely on that.
Q. If you took an average cost, wouldn't the price provided a reasonable margin above the average cost, provide more than a reasonable margin above the cost than those that were under the average?
A. Those that were under the average of cost?
Q. Yes.
A. Yes, in an industry you will find various variations of profit depending upon skill of management and other circumstances, so that we seldom find the different concerns in any industry down to a uniform rate of profit at any one time, and we do not find any one firm with a uniform rate of profit over a period of time.
Q. And what would you as an economist figure the rate of return? Would you figure it on the capitalization of the companies involved?
A. That would be a consideration to take account of.
Q. To take account of, but would you accept it without inquiry as to whether the capitalization was not inflated or was inflated?
Trial Examiner Norwood: Haven't we agreed that fairness of price is not now involved in this case?
Mr. Wooden: We have, Your Honor. I have contended all the time that it is not involved.
45261 Trial Examiner Norwood: Yes.
Mr. Wooden: But here is this witness' theory about the matter, and I have some reason to believe that Respondents have not agreed to it. I have agreed to it, but they have not. If Respondents will agree to it I will quit right now.
Mr. Bond: Of course, Your Honor, you realize that we have not agreed to that position.
Trial Examiner Norwood: Well, I have ruled out your evidence on it. I am going to rule out this, and rule out any other evidence that is offered on it by either side.

Mr. Bond: This is not factual.

Trial Examiner Norwood: Then the Commission, if it wants a fair price issue, can send it back.

Mr. Bond: This is not factual at this point. This is the witness' theory of competition.

Trial Examiner Norwood: Go ahead.

Mr. Wooden: On that basis, Your Honor, I have no desire to pursue the subject.

Trial Examiner Norwood: All right.

Mr. Wooden: But I would say that that automatically should be taken as excluding the witness' testimony on direct regarding such subjects.

Trial Examiner Norwood: Go ahead.

45269 Q. Anyway, so far as you are concerned, you think that the interest on capital invested, as distinguished from interest paid out on capital borrowed, is a legitimate item to be included in the overhead costs of the producer?

A. Yes. I would take exception to the word "legitimate." I say it is one of the overhead costs, in the economic sense in which I am using the term.

Q. Although, when the accounts are made up, that interest on capital invested is there in the form of an income to the company; is it not?

A. It may be in certain forms of accounting, but still it is an economic cost.

Q. Now, passing to page 44754, beginning on line 13 and running over to line 11 on the following page—

Trial Examiner Norwood: We will have a five-minute recess here.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. Wooden:

Q. Referring to page 44754, Doctor, you were discussing the effects of high overhead costs on the marketing problems of the industry, and in the course of it you discussed freight absorption, and on line 23 you said that:

45270 "It is profitable for that mill to go out and get a return which may be less than the total cost, including overhead, so long as it is not less than the variable cost."

You meant by "return" there, did you not, the mill net?

A. Well, in view of the question that came up heretofore, that might raise the question of whether freight was paid by the company or was paid by the buyer to the railroad, but barring any misunderstanding as to that, it means the mill net.

Q. You were there—

A. By the way, let me add to that just one other warning. If total cost includes the freight, then, of course, this might not be the mill net, but if the term "return" is interpreted in connection with the term "total cost," then I think the matter would be clear.

Q. That it means mill net?

A. It means mill net if the total cost does not include an item of freight which the mill did not pay.

Q. You were then comparing the mill net with the costs, in order to determine what the policy of the mill would be with regard to selling at or above variable cost?

A. Well, I was rather comparing what was received for the cement with the total cost of delivering that cement. Now, that may or may not include the actual payment of freight as a part of the cost in its accounts. I have already testified as to that matter, and I do not want any misunderstanding to arise here. If the total
45271 cost of getting this cement delivered to this particular place as compared with what the mill gets for its cement at that place, then you have the comparison that I am making, which shows whether it is profitable or not.

45272 Q. When you went on to say, in lines 6 to 9, that there was a "constant inducement, and it is regularly profitable if you can make sales outside of your territory which do not break the price in your own territory," you meant there that you do not break the mill net in your own territory; did you not?

A. No; I mean there the price in the territory. The price—

Q. You meant the delivered price?

A. Yes; I mean the delivered price.

Q. If it broke the delivered price it would break the mill net; would it not?

A. Well, if it broke the price it would presumably mean a lower mill net.

Q. And you went on to compare, did you not, that price

in the mill's own territory with the costs, to ascer-
45273 tain whether it would bring in some return in excess of the costs?

A. Well, I said that the price in its own territory might be high enough to cover all of the costs, including overhead, and I compared that with the lower price it might charge outside its territory, in connection with freight-absorbing sales, or, rather, a lower return than it might obtain.

Q. You would not compare the delivered price in a mill's own territory with its net foreign territory to ascertain what the relation of its price was to cost; would you?

A. Well, I would compare the return which it gets in its own territory with the cost and the return which it gets outside its territory with the cost of delivering to a point outside, and then going on to answer the question I would conclude that a mill might take a lower return outside, because it would not find it necessary to cover all the overhead costs in the outside sales.

Q. Now, you will agree, will you not, that these considerations which you were expounding here were quite important to the seller in determining his policy?

A. I think that is correct.

Q. Why is it that you then said in another place that an economist would not consider a mill net as a pertinent factor?

A. I do not remember ever saying just that.

Q. Well, would you think it a pertinent factor for an economist to consider?

45274 A. The subject of mill net?

Q. Yes.

A. Yes; under certain circumstances it might be very pertinent.

Q. Well, did you not say on page 44766 that you did not think the mill net would ever occur to an economist as pertinent?

Mr. Bond: What line, Mr. Wooden?

The Witness: I will have to find that.

Mr. Wooden: Line 5.

A. What I said there was that the buyers would not consider mill net of importance. Now, you are asking me about the sellers.

By Mr. Wooden:

Q. Did you not also say that it would not occur to an economist as pertinent?

A. I do not say that.

I say that:

"All of our economic principles of demand and supply, of the forces that determine price value, all assume that you are dealing with a certain good at the point where the buyer wants it, where it is going to be delivered to him, where he is going to use it, and the idea that buyers would take account of the mill net away off somewhere else after subtracting freight would not ever occur to a buyer; I do not think it would even occur to an economist as pertinent."

45275 Q. "Ever occur."

A. Well, pertinent, of course, to this question that the buyer is asking as to the delivered price.

Q. Now, beginning on page 44755, you begin a discussion of dumping and define it as:

"* * * selling at a distance from the location of the seller at a price which produces a mill net less than is produced on the sales in the immediate neighborhood."

Why not define it, Doctor, as selling away from the seller's location at a delivered price that was lower than the delivered price in the home market?

A. I just do not think that is a correct definition.

Q. You do not think it would be a correct definition?

A. No; I do not think it would be a definition of dumping.

Q. Then, it is the difference in the net that makes dumping?

A. Yes; that is as I define the term.

Q. Is it not the difference in the net which is economically significant in the consideration of dumping?

A. That is my understanding.

Q. Now, on page 44756, you compare dumping with the international form of dumping and say this:

"* * * has been often connected with the idea of protection to home industries, and all that—."

What did you include in the term "and all that"?

45276 A. Well, I meant all the ideas and arguments and discussion that have gathered about the theory of the protective tariff. I did not have anything more definite than that in mind.

Q. You go on and mention "some sinister connotation on the part of those whose sympathies are in favor of protection." Is that what you intended to say—in favor of or who were opposed to it?

A. No; in favor of it; those who favor protection and look with disapproval upon dumping by foreign manufacturers. That is what I was referring to.

Q. Well, dumping by foreign manufacturers in their countries?

A. In their countries.

Q. But they would look with approval upon it, would they not, when they go into foreign countries?

A. Well, that has nothing to do with this particular question.

Q. The question is what your meaning was here when you were testifying.

A. Well, I am trying to explain that. My meaning was that the advocates of the protective tariff or protection to their own home industries look with disfavor on dumping foreign goods in their markets, and that has given a connotation to the term "dumping" in connection with the international form of dumping, which I did not want to be understood that they attach to its use in connection with the same process within a particular country.

45277 Q. When you said on lines 13, 14, and 15 on that page that:

"* * * the presence of high overhead costs is the basic condition which makes dumping profitable and possible."

Is it not just as true that the presence of low variable costs or the possibility of reducing variable costs makes dumping possible?

A. I had not heard of it in terms of possibility of reducing cost. Of course, when I say "The presence of high overhead costs," that could also be considered in the presence of comparatively low direct costs, since the sum of the two makes up the total cost. That would be really another way of saying the same thing, and that is all I meant to say in this answer.

Q. When you said on line 24 of that page that dumping "becomes profitable if the net is somewhat more than the variable cost," you were using "net" there in the sense of price; were you not?

A. Well, the net return after paying the freight cost which is involved.

Q. Now, on page 44757, lines 10 and 11, you said that dumping created a tendency towards lower prices to the consumer in the place where the commodity was dumped.

A. Yes; that is the meaning of it.

Q. And you did not mean that it created a tendency towards lower prices to the consumers in the home market?

A. At the place where the dumping manufac-
45278 turer's plant is located, you mean?

Q. Yes.

A. No; I was not expressing any opinion as to that.

Q. I suppose you would agree that that was the purpose of the seller dumping was to get a higher average net on his sales?

A. Well, his purpose is to get a higher profit on his business.

Q. Does not that require a higher average net?

A. That again runs into complications of accounting which might compel me to make a long and qualified answer. I think the only essential thing is that he finds it profitable.

Q. You would not expect a seller to continue dumping if it had the effect of reducing its average net; would you?

A. Well, a reduction of average net, accompanied by a very large increase of the quantity, might be profitable.

Q. Now, on page 44758, you there disagreed with Dr. Viner's testimony, to the effect that the systematic practice of dumping could occur only when there was monoply control in the market where the commodity was being produced.

Doctor, I am going to put the same question to you as I put to Dr. Viner, in substance, and that is: Can the systematic practice of dumping occur unless there is some monopoly control at the place where the commodity is being produced?

A. I think it can.

45279 Q. Well, in your testimony on page 44758, you stressed that the individual concern might find it profitable to make dumping or freight-absorbing sales. Do you say that it would do that independently, unless it knew that it would be permitted to dump in other mills' territory, and unless it knew that it was going to permit other mills to dump in its home territory?

A. I think each mill would decide, on the basis of all the circumstances, whether this were profitable or not. If your assumption means that it is not going to be permitted to dump, then I take it that means that dumping is impossible.

Q. No; I say permitted to dump.

A. Well, all I understand is that if dumping is possible, their it would decide whether it would be profitable or not, and I do not think its decision would be governed by the possibility of other mills dumping in its territory.

Q. If individual were profitable, why would not systematic dumping be still more so?

A. Well, do you mean by "systematic dumping" anything more than regular dumping?

Q. Yes; I do mean something more than that. I mean that the home market mill will dump in other mills' territories at the same delivered price that is prevailing there, and at the same time permit those other mills to come in to its home territory and dump at the same delivered price prevailing there.

A. Well, I perhaps ought to—

45820 Q. That that is regularly done; is that what that would mean?

A. I think I ought to refer to the answer to the previous question, which you asked Dr. Viner, in which I believe the word "systematic" was used. I do not interpret that word in just that way. I interpret it to mean the more or less regular recurring of the dumping going on, so that my answer to that previous question must be taken in connection with this statement as to what I understood the word "systematic" to mean.

Q. I am trying to make it more clear to you now.

A. Now I will be glad to answer it.

Q. I want you to answer my question as I explained the systematic character of dumping.

A. Could I have the question read again, please?

(Question read.)

The Witness: Now, what was the question, please?

By Mr. Wooden:

Q. Would you say that can occur only under conditions of monopolistic or collusive control?

A. No, I would not.

Q. Would you say that could be done by the individual, independent action of these various concerns?

A. I think that condition could result from independent action of the various concerns.

Q. If the European producers of cement when they sold

n this country were to make their delivered prices
45281 here the same as the delivered prices of the domestic manufacturers and the American manufacturers were to dump in Europe at the same delivered prices of the European manufacturers, would you consider that explainable on the ground of individual, independent competitive action?

A. Well, all I can say is that if actually did occur, I would not be able to infer that there was collusion to bring it about.

Q. Would you infer it was the result of competition, independent, free competition?

A. Well, I would have to know the various circumstances about it to draw an inference. I can draw a negative inference, that it does not set up conditions which I think could not result under conditions of competition.

Q. Suppose you were to assume that a group of competitors assisted each other in dumping in each others' home markets, would you consider that to be compatible with independent, individual action?

A. Well, I think my answer would all depend on the nature, character, and degree of the assistance that was rendered to each other. I would not be able to answer from the mere assumption that there was some assistance.

Q. You would not consider this sort of systematic dumping that I have described as counteracting, or tending to counteract, the natural tendency of buyers to buy in the best market?

45282 A. No, I would not.

Q. Well, haven't you written to the effect that the normal and natural reaction of business men is to keep out foreign competitors even in using the term "foreign" in the sense of domestic producers at a distance?

A. Well, that might be a very rough paraphrase of something that I have written.

Q. Did you write to the effect that the business man is no more friendly to the competition of his fellow citizens in other States or towns of his own country than he was to foreign competition?

A. Assuming that you have read that from my book exactly as it is there printed, I recognize that statement.

Q. Referring you to page 344 of Volume I of your text on Elementary Economics, do you find that statement there?

A. Would you point it out?

(Mr. Wooden indicates part referred to.)

A. Yes, that is a correct quotation.

Q. Did you also write there back of all the persuasion to patronize home industry was the desire to counteract the natural tendency of people to buy in the best market, which is the foundation of competition?

A. Yes, that is correct.

Q. You don't think that this systematic form which I have described to you of dumping at the same de-
45283 livered prices has any tendency to counteract that natural tendency?

A. The natural tendency of people to buy in the best market?

Q. Yes.

A. No. I think it is the opposition to dumping which counteracts that tendency as I state there.

Q. Will you as an economist expect competitors to assist each other in going into their respective home markets and dumping there—

Mr. Bond: It is the same question.

Q. —unless—

Mr. Wooden: It is not finished yet.

Q. —unless—cut out the "unless." If it involved cutting below the prevailing delivered prices in the home market?

Mr. Bond: If Your Honor please, the witness previously said he could not answer that question unless Mr. Wooden defined the word "assist." Now, he puts it again in another question to him. I think it ought to be defined.

Trial Examiner Norwood: Read the question.

(Question read as follows:

"Q. Would you as an economist expect competitors to assist each other in going into their respective home markets and dumping there if it involved cutting below the prevailing delivered prices in the home market?")

A. Well, I would not be able to—

Trial Examiner Norwood: I will overrule the
45284 objection.

A. I did not.

Trial Examiner Norwood: You may answer the question, if you can.

The Witness: Oh, I beg your pardon.

A. I cannot answer that question thus generally stated

in general terms without knowing the kind of assistance, and many other circumstances that might be involved.

By Mr. Wooden:

Q. Would you expect them to render any assistance if it involved selling at less than the delivered prices prevailing in the home markets?

A. Well, without any more knowledge of the conditions I can conceive that that might happen; that is all I can say.

Q. You could consider that normal competitive action, would you?

A. Not necessarily normal, but I would consider it as possible, which is, I believe, the question that you asked me.

Q. Would you consider it non-collusive action?

A. Well, I cannot be quite sure of that, not knowing what kind of assistance you are taking about.

Q. I am talking about any kind.

A. I think there might be kinds of assistance which would not be branded as collusive.

Q. Then, you think it would be normal for com-45285 petitors to assist other competitors to undersell?

A. I did not say it would be normal, and that raises the question what you mean by "normal." All I said was that I could not say that it would be impossible, or that I could not expect it ever to occur.

Q. When you said in your text on economics on page 172, that the great majority of people will seek to buy where prices are lowest, do you mean to say that they are bound to be defeated in that seeking because all sellers must sell at the same price?

A. No, I do not think that defeats them.

Q. Doesn't it defeat their seeking if all sellers do sell at the same price?

A. No, they still seek and pay the best price they can.

Q. They seek, but they do not find?

A. They find the lowest price. If it happens to be that all prices are the same, they can't do any better.

Q. But you don't mean to say, then, that all sellers must quote the same price at the same time, merely that when it comes down to an actual sale that is where the price becomes uniform; is that right?

A. Well, that was not part of my answer to this previous question at all.

Q. What is your answer to the pending question?

A. I would like to have it stated a little more
45286 fully where I have said that, and under what circumstances.

Q. I will ask you now if that is what you mean.

Read the question.

Trial ~~Examiner~~ Norwood: Read the question.

(Question read.)

A. I do not think I have. I cannot recall what statement of mine that refers to.

Trial Examiner Norwood: Well, answer this without regard to any previous statements.

The Witness: Well, the statement is so involved and confused that I cannot say that I would subscribe to it as it reads.

By Mr. Wooden:

Q. Well, can't you tell us, Doctor, whether in all your testimony about uniformity of price and market you have been referring to uniformity of actual price, or have you been excluding from it, or including in it the matter of price quotations as distinguished from prices in actual sales?

A. Oh, I understand you, now.

I have been considering the actual price which the seller charges and the buyer pays, and have been recognizing that there may be off price sales ~~occasionally~~ in a condition which is not a perfect market.

Q. And more still off price quotations?

A. That might exist.

45287 Q. Would you expect under the marketing methods employed here, as outlined to you in the hypothetical questions, that a producer would seek to sell and press his selling efforts in the territory where his delivered price is highest?

A. Not necessarily, because the element of costs also appears, including especially the cost of freight.

Q. Would you expect as an economist that producers would press their selling efforts in the territory where their mill net is lowest?

A. They might press selling efforts there, yes, if they thought it was profitable to sell there.

Q. I mean press them by comparison with the territory where their mill net is higher.

A. I don't see just how that comparison would be

made. I should suppose a producer would press his sales at any point where they were profitable.

Q. You do not recognize that a producer would expend less selling effort in one part of his territory than he would in another?

A. He might, yes.

Q. Well, would you expect him to expend a greater amount of effort in the territory where his mill net was lowest and his delivered price was highest?

A. I would not be able to answer it on those terms. I would expect him to put his sales effort, if he has a
45288 limited budget for sales effort, we will say, in those places where the return would be most profitable.

Q. Would you expect a producer in this industry to prefer selling at a delivered price of $3 to one destination rather than a $2 delivered price to another?

A. I cannot answer that without knowing what net return he gets on the two sales.

Q. Do you agree with this statement, that every producer of goods naturally seeks to sell his product in the market where he obtains the highest price,—be it near at hand or far away?

A. Not without some qualification as to the element that is involved there. In the context in which that occurred those matters might be made clear so that I might or might not agree with it.

Q. Well, directing your attention to that statement as it appears on pages 527 and 528 of Volume I of your text on Elementary Economics, and if you want to make any qualification to your answer because of the context, why, you may do so.

Trial Examiner Norwood: Is that passage you just quoted from—

Mr. Wooden: From his book.

A. This is a general statement of the attitude of producers and sellers in the international or interre-
45289 gional market, and the reference to highest price here obviously includes, from the context, a reference to the cost involved. In fact, this whole matter of interregional trade is discussed always with respect to the cost of transportation or delivery to the different markets.

By Mr. Wooden:

Q. But wouldn't you compare the highest price with the average cost?

A. No, you would compare the—what the producer compares is the net return he gets from different sales, and here the assumption is that other things being equal the higher price will produce the higher return.

Q. But that assumption is based on a comparison with an average cost rather than the cost of that particular producer, isn't it?

A. Well, it is a comparison of the results of that particular transaction, with their results of sales in other markets.

Q. Well, doesn't that involve the use of an average cost?

A. Not necessarily, no.

Q. Do you agree that the consumers just as naturally endeavor to make their purchases where goods may be obtained most cheaper?

A. Yes, that also is true as a general principle in its proper context.

Q. Did you also say in that connection that there
45290 was a tendency there for goods to move from where their prices are low to where their prices are high?

A. Yes, that is also true, also interpreted in connection with the context.

Q. Well, the context had to do with movement of commodities between regions, didn't it?

A. Yes.

Q. Suppose you assume that cement regularly moved from where the price is high to where it is low, and that the producer seeks to sell in markets where he obtains much lower prices than in his highest priced territory, how does that—does that harmonize or conflict with the statements that I have read to you from your book?

A. Well, I take it your question also assumes that the producer is able to sell in both markets, both in the high-priced and low-priced market.

Q. Yes.

A. Well, with that assumption it does not conflict at all with statements in my book. It simply represents a normal example of dumping.

Q. Well, in dumping the movement conflicts with that tendency, does it not, for goods to move from where the price is low to where it is high?

A. No, not necessarily, and I suspect not ordinarily.

Q. Well, didn't you define dumping as a move-
45291 ment of goods from a high-priced market into a low-priced market?

A. No, I did not define it so.

Q. Well, didn't you define it as a movement of goods into an outside market at a lower price than was going in the home market?

A. No, I did not define it that way.

Q. Well, then, I don't understand how you did define it.

Mr. Bond: You have been over it once.

Mr. Wooden: Well, I know.

A. I defined it with relation to the mill net. Here is my answer on page 44755. I defined dumping there. Shall I read it?

By Mr. Wooden:

Q. Substituting the term "mill net" for "price," as I used it there, what would your answer be?

A. Well, I could not answer it in those terms. There are various conditions of relative price, delivered price, between the point of origin and the point where the goods are dumped, and that is not the determining consideration of the definition of dumping.

Q. What economic basis for interregional shipments is there for the regular movement of cement from Kansas City into Des Moines, Iowa, and the regular movement from Des Moines, Iowa into Kansas City when there are two mills in Des Moines, Iowa, shipping into Kansas City and they match the delivered price in Kansas City
45292 when they ship there, and the Kansas City mill matches the Des Moines price when it ships there?

A. Well, that looks to me like the result of the basing-point system of marketing with freight absorption carried to a very high degree.

Q. And you say that that is explainable on some other definite general economic theory such as economic writers write about?

A. Well, to explain it fully I would have to know all of the circumstances. So far as your hypotheses go, I infer that that can be explained by definite economic principles.

Q. Is it in conflict with the economic principle of the flow of goods from surplus to deficit areas?

A. Not on the face of all of the facts that you have given me. To say "yes" or "no," I would have to know all about the particular circumstances.

Q. Would you say without knowing more of the other circumstances that it is in harmony with the economic principle of goods flowing from surplus to deficit areas?

A. Well, without knowing some of the facts I am not in a position to answer general questions of that—I might add that everything that happens is in harmony with the principles of science. I do not quite get what you mean by asking something which you say has actually occurred,

45293 is or is not in harmony with some economic principle. Economic principles are intended to describe in terms of cause and effect what does happen under certain conditions.

Q. Well, I think you agree that unless you knew more about it than the question poses, you would not want to say that it was in harmony with the economic principle of goods flowing from surplus to deficit areas?

A. Well, I would infer it was, yes.

Q. All right.

Have you written to this effect in your textbook: "The reason that the merchants of any region import a commodity from outside is because it can be sold in the domestic market at a price which is lower than the price at which a similar article of domestic manufacture can be sold"?

A. I might have.

Q. Well, will you find that on page 527 of your textbook on Elementary Economics, Volume I?

A. Yes.

Q. Then, what economic reason is there for cement dealers importing cement from distant mills when they have much nearer mills and when the delivered prices from the distant mills is the same as those nearby?

A. Well, there might be various circumstances which would make the dealer think that it was advantageous to him to buy the product at the more distant mill, even though—

45294 Q. Did you write in your textbook that interregional movement of a commodity ceased when price equilibrium is established?

A. I might have.

Q. Well, didn't you—pointing to page 528 of Volume I of your text?

A. See, I am not able to recall from memory the exact words I may have used, but I can easily identify it.

45295 (Mr. Wooden shows books to the witness.)

A. Yes. You paraphrased that, didn't you?

Q. Oh, yes, sure.

A. What I said was: "The movement of any commodity from the low-priced to the high-piced market reaches a limit when, as the result of such movement, the difference between the two prices is brought down to the cost of shipping the commodity from the first market to the second."

I wrote that.

Q. And you also wrote that thereupon the movement ceases price equilibrium having been reached?

A. Yes, that is right.

Q. Well, how would you explain as an economist a continual and recurring interregional movement, despite equilibrium of prices at destination?

A. I would explain it on, in the first place, on the basis of the basing-point method with freight absorption; secondly, on the basis of some of the dealers determining what would be their most advantageous choice of sellers based on all possible considerations and thereby including circumstances which in the statement you read from my book were assumed to be equal.

Q. Did you also write in your book that under competitive conditions price serves as an automatic control over regional division of labor and interregional trade?

45296 A. It sounds like something I may have written.

Q. Well, doesn't that statement appear on page 529 of Volume I of your text on economics?

Mr. Leisure: If Your Honor please—

A. Yes.

A. Yes.

45304 Q. Would you say, as an economist, that it is natural for a group of competitors independent competing to try to make their delivered price the same as each other's?

A. It would be undercertain circumstances natural for competitors acting separately to meet an existing price, and thereby make their price the same as the price of other competitors that they had found there, but I would draw a distinction between the aim to meet the existing

45305 price and the aim to make the price of the different competitors the same.

Q. The effect is the same?

A. The effect might be the same.

Q. But you would say that it is natural for a group of competitors to try to reach the same effect by having their delivered price the same?

A. Well, again, I did not say that they were trying to reach that effect. I said they were trying to match the existing price, and a certain effect may come from that.

Q. Doctor, on page 44765, you said that cement at two different places are two different economic goods. Do you see that—line 19.

A. "Cement at point 'A' and cement at point 'B'"; yes.

Q. Two different economic goods.

A. Yes.

Q. If that is true, how can you compare prices at those two different places, except by allowing for freight, which is the thing that makes them economically different?

A. What makes them economically different is that they are at different places. Now, you can compare those two prices and say that the price of cement at place "A" is so and so, and the price of cement at "B" is so and so. That is as far as your comparison can go, I think.

Q. Yet you say you are comparing two different economic goods.

45306 A. Yes; different because they are at different place.

Q. Then, you cannot compare the price of the goods separate from their place utility; can you, except by allowing for the freight?

A. You do not have to allow for the freight to compare the two prices. A comparison of the prices simply shows that the price in "A" is higher or lower or equal to the price in "B." That would be a comparison of prices, I should think.

Q. Wherever you found a seller charging $3 a barrel at one destination and $2 a barrel at another, would you charge him with having made different prices for those two destinations?

A. If the seller charges $3 for cement at one destination and $2 for cement at another destination, I would say he was charging different prices for cement at those two different places.

Trial Examiner Norwood: For different commodities?

The Witness: From the economic point of view they

are different economic goods because of the difference in their price.

By Mr. Wooden:

Q. Did you, on lines 21 to 23, mean to say that Dr. Viner said that when a buyer buys something and when a price is set for something, it has not anything to do with the place of delivery?

A. That was my paraphrasing of the quotation
45307 which I was asked to comment upon. The direct language was the price received by a producer at his mill or point of production without regard to location or color of the hair or the complexion of the purchaser.

Q. You think that is the same as saying that the price of something has not anything to do with the place of delivery.

A. Well, I thought this reference to the color of hair and the complexion was not material, and that the point of the question had to do with the relation of price to point of delivery.

Q. Do you still say that the testimony of Dr. Viner, to your mind, is the same thing as saying that price has not anything do with place of delivery?

A. In substance it is the same, because he said it would be an identity of price received by a producer at his mill, and my point is that it would be an identity of price at the point of delivery.

Q. You would say that is the same thing as though he said price did not have anything to do with the place of delivery?

A. It seems to me that that recognizes the purpose of his testimony.

Q. As a matter of fact, do you not recall having read Dr. Viner's testimony enough to know that the price at the mill, in his view, did have a very definite relation to the place of delivery?

45308 A. Well, in the first place, the question was directed only to this quotation that was put before me.

Q. Yes.

A. And in this quotation, certainly, he indicates that the price at the mill is important; in fact, he indicates that that is what he regards as the only important price.

Q. Do you not understand that under the basing-point system that the price at the mill—you may call it at the

mill, or whatever you will—has a very definite relation to the price at the point of delivery?

A. It has a relation to the price at the point of delivery, and it is the price at point of delivery and not the price at the mill which corresponds to this economic law of identical price.

Q. Why do you attempt to say that, according to Dr. Viner, the price should not have anything to do with the place of delivery?

A. Because in the quotation which I was asked to comment upon it does not seem to have anything to do with the point of delivery.

Q. In other words, you think that Dr. Viner misconceived the set-up of the basing-point system, so that he did not understand that the price or net at the mill had any relation to the place of delivery?

Mr. Bond: I object, if Your Honor please. The
45309 question which we are discussing, the quotation from Dr. Viner, refers to another method of selling, which Dr. Viner calls "full price competition." Now, under that, he says that it would be the price at the mill without regard to the location or color of the hair, et cetera, of the purchaser. He was not talking about the basing-price system, at this particular place. He was criticizing it—criticizing it because it did not have the identical price at the mill, and Mr. Wooden's question is misleading for that reason.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Bond: You see, he was not talking about the basing-point system. He starts out on identity of price, which is approximated under full price competition, and so forth.

Mr. Wooden: Of course, he was contrasting it with the basing-point system.

Mr. Bond: Exactly.

Mr. Wooden: You say he was not talking about it when he was contrasting it with it?

Trial Examiner Norwood: I will overrule the objection. Answer the question.

The witness can straighten us out on this matter.

The Witness: May I hear the question read again?

45310 Trial Examiner Norwood: Read it.

(Question re-read.)

A. In answering this question, I made no assumption

as to Professor Viner's understanding of the basing-point system or his misconception, except so far as they appear in the passage quoted to me. That, it seems to me, is erroneous, in that he says the identity of price under free competition would be an identity of price received at the mill without regard to the location of the purchaser.

By Mr. Wooden:

Q. When you used the word "one," in line 21, were you not referring to Dr. Viner?

A. I was referring to anyone who would take the position that Dr. Viner did in the question.

Q. Then, you were referring to him?

A. That is a reasonable inference, yes.

Q. You realize that you are charging in that language that Dr. Viner testified that the price had nothing to do with the place of delivery.

A. Well, under the terms of the quotation read to me he virtually says, in substance, that the price, the identity of price, is approximated under full price competition, and all that I had in mind relates to the mill and not to the location of the purchaser. That is what I had intended to paraphrase in the statement I made below.

45311 Q. If you want to stand on that, all right.

Now, referring to page 44766, where you discuss prices, the meaning of price, and mill net, on line 4, you talk about subtracting freight, that no buyer would take into account the mill net somewhere else after subtracting freight. Do you realize, Doctor, that there are some instances where it is not a case of subtracting freight, but adding freight, in this system?

A. Sir, I do not find the—

Q. In the fourth line from the top.

Do you want the question read?

A. I think it would be well.

Mr. Wooden: Will you read the question, please?

Trial Examiner Norwood: Read the question.

(Question read.)

A. As a matter of fact, I am not aware of such cases. My meaning here, I think, is perfectly simple, that the way in which a buyer would calculate the mill net if he were interested would be by subtracting the freight from his delivered price. That is all I meant by that.

By Mr. Wooden:

Q. Well, don't you understand that the basing-point system involves the addition of freight from the basing point to the mill location of a non-base mill when it sells at its mill location?

45312 A. Yes, I understand that the basing-point system involves the addition of freight to the mill base in order to determine the delivered price which is what the buyer would consider; if he wanted to know the mill net he would work the operations backwards and get back to mill net.

Q. Well, don't you understand that in the case I just posed that freight would be added although there was no actual freight involved from the non-base mill, I mean?

A. Well, in that case this buyer probably might have no way of knowing what the mill net—in this case he would be even less interested than I assume. My point is that he is interested only in the delivered price and anyway he calculates the mill net the answer is the same.

Q. Do you think the buyer would not be interested in a mill net that was made up of a base price plus freight of as much as 50 cents, or more, a barrel when there was not any freight actually on the purchase that he made from the local non-base mill?

Trial Examiner Norwood: Do you mean a delivered price of a mill, or a mill net?

Read the question.

(Question read.)

A. No, I do not think he would be interested. I think, as I have said before, he would be interested in the price he would have to pay for cement as compared with what he might have to pay to any other mill or seller from whom he could buy.

45313 Q. And it is not pertinent to the economist if the mill net is made up in some cases of a base price plus substantial amounts of freight when there is no actual freight?

A. It is not pertinent to the economist when he is directing his attention to the particular point on which I was testifying.

Q. Is it pertinent to the economist in any way?

A. There might very well be problems in which the economist was interested, in which all these matters of mill

net and freight would be pertinent, but that is not the problem upon which I testified in this particular answer.

Q. On what matters would such a mill net be pertinent to an economist in his thinking?

A. I have not in mind now any particular problem. I am only willing to admit that there might be problems in which an economist would be interested, in which these things would be of interest.

Q. Do you think it is pertinent to buyers and to economists if the variations in mill nets mathematically reflect an identity of delivered prices?

A. I do not think that matter of mill nets is of interest to the buyers, after they have ascertained the delivered prices that they have to pay, I think few, if any, buyers would go back of that and inquire into mill nets.

Q. Do you think it is not pertinent to buyers 45314 whether the price is identical delivered or not?

A. Well, the only way in which it is pertinent is that the buyer finds he has not any choice as between—there is no reason for him to make a choice between sellers on the basis of price alone.

Q. But it is not pertinent to you as an economist to consider that the variations in mill nets automatically and mathematically reflect identity of delivered prices?

A. It may be pertinent to me as an economist as—it is not pertinent to the particular matter that is discussed in answer to this question.

Q. You would not say that what is pertinent to the seller is not pertinent to the buyer or to the economist, would you?

A. I do not want to say that any economic fact or principle might not be pertinent to an economist under certain conditions. As to the seller I can conceive of many things that are pertinent to the seller in which the buyer would not be interested.

Q. You mean in his relation with the buyer,—the seller is interested in his relation with the buyer, and the buyer is not equally interested in the same manner, so far as he is concerned?

A. Well, I was testifying about the interest of the buyer in delivered prices and mill net, and then if the—

Q. The seller is very much—

A. Then in answer to your question I stated that there might be many questions in which a seller

would be interested and which would not interest the buyer.

Q. Yes, that is conceivable, but you say that the seller would be much interested in the mill net and the buyer had no interest in it.

A. That is the substance of my testimony.

Q. Now, going on to line 16 on that page, 44766, will you tell us whether the word "at" should be inserted between the words "not" and "all"?

A. Yes, I think that is an error in the record. I think that should be "not at all."

Q. All right.

A. Yes, that obviously should be so.

Q. Now, you agree on this page, following that, do you not, that there may be a market at the mill located at a given place, and that the price there, of course, will be the mill net without any transportation charge in it?

A. Yes.

Q. That is also its highest mill net, isn't it?

A. Yes, as far as I can now think, it would be its highest mill net—oh, no, no, no, I must change that. No, this mill within its own territory will, I suppose, have the same mill net since it adds freight to the mill base to get the delivered price at other places.

Q. Well, that would be higher there than any
45316. other place, won't it, as it begins to extend, or to incur some freight charge?

A. No, because it adds the freight charge to its mill base to get the delivered price.

Q. And to get its mill net, a non-base mill?

A. Oh, you are talking of a non-base mill?

Q. Yes, speaking of a non-base mill.

A. Yes. My answer related to a base mill.

Q. Well, it is also true of a base mill, isn't it; that is, base price is its highest mill net?

A. Its base price is its mill net.

Q. Not when it goes into other territory.

A. No, it has no other mill net that is higher than that, but it has the same mill net in many places.

Mr. Bond: You are, of course, meaning, Mr. Wooden, on the basis of the assumptions that he is using throughout, not as a factual matter?

Mr. Wooden: Yes, of course, as he understands the situation.

A. Now, a non-base mill would ordinarily have a higher mill net near its mill than at greater distances.

By Mr. Wooden:

Q. Well, take the case of a non-base mill selling at its mill location, where it obtained its mill net by adding the freight from the controlling basing point, how would
45317 you compare that price—what would you compare that price with at other points where that non-base mill was selling?

I will overrule the objection.

Mr. Wooden: I have not finished the question.

By Mr. Wooden:

Q. Under those circumstances, Doctor, what would you compare that non-base mill's price at its mill location with in order to determine whether it was making a different price to other customers at other locations, and how much difference in price it was making?

A. Well, the comparison I would make would be
45318 a comparison between the price that the mill charges its customers any place for cement delivered at that place and the price it charges for cement delivered to other customers at some other place.

Q. Well, would you compare the non-base mill's mill net at its mill location with its delivered price made at some other location?

A. For what purpose?

Q. To ascertain whether it was making a different price at the other locations?

A. Why, no. I would go directly to the prices it was charging at the various locations and compare them.

Q. For the purpose of dumping, you would not compare the delivered price, would you, with the price in the home market?

A. For what purpose of dumping?

Q. In determining whether it was dumping or not.

A. No. The definition of dumping relates to mill net at the location of the mill and at the other place where dumping is—where dumping occurs.

45320 Q. Now, Doctor, in lines 19 to 22, on page 44766, you take the position there, do you not, that there is a market at the mill wherever there is no transportation element involved?

A. Well, there is a market at the mill if buyers and

sellers meet there at the mill, and I simply assumed that in that case there would be no transportation.

Q. And that is a delivered price in that particular market, isn't it?

A. Yes.

Q. Isn't that a concept of the freightless market that we have heard something about?

A. Well, that is—we haven't heard about a freightless market, as I recall. We have heard about a freightless price.

Q. Well, isn't that price in that locality?

A. Yes.

Q. Wouldn't that be a freightless price?

A. Yes, that is a freightless price if the market is right where the producer is.

Q. There is such a thing as a freightless market,
45321 a freightless market price, isn't there, even according to your own statement?

A. Yes, I think I testified to that myself.

Mr. Bond: And such a thing as a panda.

Trial Examiner Norwood: Proceed.

By Mr. Wooden:

Q. And wherever there is a group of mills, such as eighteen or twenty in the Lehigh Valley, and a purchase in that locality from them at their Lehigh Valley base mill, isn't that a purchase without any freight being involved?

A. Why I confess I do not know all the facts about the delivery of cement at the various mills in the Lehigh Valley, but my proposition is that if cement is delivered right at the mill without any transportation from the mill, that that is the market, and that is the price, it is the delivered price, and it is a freightless price.

Q. Well, suppose we assume that the Federal Government or a railroad is buying f. o. b. mill and takes delivery, takes title to the property at the mill. Then, I understand you would agree that the market is at the mill in those cases?

A. If the cement is actually delivered by the seller to the buyer, whether Government or not, at the location of the mill, then I say that is the market and the price at which it is delivered is the price.

Q. If in such case the Government or the rail-
45322 road wanted to find out whether it was buying as

cheaply as dealers, what would they compare their f.o.b. mill price with?

A. I think they would compare the cost of getting their cement delivered to the point at which they wish to use it, with what it was costing dealers to get cement at that point.

Q. Suppose they did not know when they bought it where they were going to use it, could they then find out whether they were paying as much or more than the dealers?

A. The only comparison they could make if they did not know the delivered price was the price dealers were charged f. o. b. the mill, the same as they were being charged f. o. b. the mill.

Q. You would not think it would be logical if they compared their f. o. b. mill price with their mill nets that the mill was accepting from dealers?

A. Oh, no.

Q. Now, page 44767, lines 10 to 15, where Dr. Viner's answer was read to you and you were asked whether you agreed with it.

A. Yes, I find that.

Q. And you said you disagreed. I will ask you more specifically whether under the conditions you were there testifying about it is your testimony now that there is no indication to you of any understanding to follow the leader who put in the two different base prices on either side of a certain State line?

45323 A. I think that is as far as I can see, the same question that I was asked on direct. My answer would be the same on the basis of the hypotheses put before me. I, in the absence of any other evidence that would indicate collusion or combination, I would not be able to draw an inference that there had been an agreement or combination.

Q. That is just what you said on direct, but my present question is even if you are unable to draw that inference, do you now say that there is no reasonable basis for anyone drawing such an inference?

A. I do not know what other inferences other people might draw. I do not draw from the facts before me, in my opinion as an economist, an inference of collusion.

Q. That is just the extent that I am interested in, of your opinion there. Do you go so far as to say that no

one would be warranted in drawing that inference or are you merely saying that you would be unable to draw it?

A. I was only asked if I would draw such an inference, and I would not.

Q. I know what you find here. I am asking you now—I am asking you now whether you would go so far as to say that no one would be warranted in drawing such an inference?

A. I have no facts or hypotheses or information here that would lead me to think that anyone else would draw such an inference.

Q. You were testifying about a man who had 45324 drawn such an inference?

A. Well, I think he is—

Q. Now, do you say that no one could reasonably draw that inference, or are you merely confining yourself to say that you would not draw it?

A. Well, as regards Dr. Viner, I am testifying that I think his inference is incorrect, if he drew the inference that there was collusion.

Q. But do you go so far as to say that that inference is not a logical inference,—not a reasonable inference?

Trial Examiner Norwood: According to the way you see it.

A. Yes, I do not regard his inference as a logical or reasonable one from the hypotheses before me.

By Mr. Wooden:

Q. All right.

Now, on page 44768 where you were testifying about a constant differential in—where you were testifying about this different base price, the two sides of a State boundary put in by the same company, you injected the element of transportation, different transportation situations as possibly accounting for it. Do you see that, on lines 23—22 and 23?

A. Yes, I see that.

Q. Well, don't you understand, Doctor, that the two base prices involved are exclusive of the transportation element?

45325 A. I understand that the price bases are the price bases at the mill.

Q. Yes.

A. And that transportation is involved in arriving at the delivered price in any place.

Q. But this is a difference in the base prices, and I am asking you how the different transportation situations would account for the difference in the base price, not in the delivered prices.

A. Well, as I prefaced this particular answer, I said that I had no actual factual knowledge as to what conditions might have led this mill to make these particular base prices, and then in answer to a question by His Honor I tried to simply name offhand certain things that would occur to me as possibilities. This, of course, would not be the transportation from the base to these delivered points. It might be some other transportation situation from other parts of the country, and I was only giving some random examples that occurred to me without any notion that they represented factual testimony. All I can say is that I infer that there are some considerations which have led this mill to set up this particular basing situation, and I do not derive an inference of collusion from the fact that it did so, and that other mills made the resulting prices.

Q. Well, when you testified on page 44769 that
45326 this condition of two base prices on different sides of a State boundary line would be virtually inevitable under the system as assumed, I will ask you as to why it would be virtually inevitable unless you assume that following the leadership of a base mill is inevitable, however arbitrary?

A. What I meant to say was that under the basing system as described to me in various hypotheses I find it virtually inevitable for different competitors to meet the price set in a particular place by the mill; that is, the base mill for that place. I did not mean more than that, and my answer definitely is related to the system as assumed.

Q. Of course, you understand that they followed higher base price as well as the one that was lower in the two different territories?

A. They followed the base price—they followed the delivered price in each particular place.

Q. Well, you are not assuming there, Doctor, that that is what happens every time that they followed the delivered price, that they ascertained to be the going delivered price at each destination? Are you assuming that?

A. Am I assuming what?

Q. That the mills ascertain what the delivered price is at each destination before they follow it?

A. I assume that the mill ascertains the destination price in a place at which it proposes itself to offer to sell cement.

45327 Q. Well, suppose you were to assume that in very many cases that they ascertain some destination price and calculated back to find out what the base price is reflected and then apply that base price to all the other destinations, does that make any difference in your testimony?

A. That would not make any difference in my testimony as to whether this situation indicated collusion.

Q. Do you understand when you testified about this situation of a constant differential between a base price in adjoining producing regions that it was a constant net changing differential over a period of years?

A. That I think agrees with the language. The language was that if over a long period of time the base price between two separate producing points have remained at a constant differential.

Q. Yes.

A. I understood that language, I think.

Q. Well, in your answer—this is why I asked the question—you said it was not unnatural there should be a fairly constant differential. Did you understand it was fairly constant or exactly constant?

A. Well, I was stating in general a principle which would include the other, but I could just as well have said "be a constant differential" as stated in the question.

Q. In other words, it would not appear unnatural

45328 to you if a differential of 10 cents a barrel were maintained over a long period of years and during which no mill, even, would cut it one or two cents a barrel?

A. No, so far as the assumptions before me go, I can see that that might be a natural situation.

Q. Well, referring to your testimony on lines 22 and 23 of page 44770, can you make a little more clear what you meant by that language?

A. Can you tell me where my answer begins to which you refer? See, I do not have your page numbers on my copy,—the line numbers.

Q. Well, next to the last paragraph.

A. "I am also a little uncertain"?

Q. Yes.

A. Well, when words like "absolute" are used, in gen-

eral that describes a mathematically extreme condition which seldom in any practical affairs will be found to exist, and I first wanted to note that. Then I went on in the next paragraph to answer the question itself.

Q. Well, did you mean that Dr. Viner's testimony was open to criticism because it brought in too large of an absolute utterly immovable feature to make it practicable or applicable?

A. Well, I meant to serve notice that I always have some misgivings about the word "absolute, but then I went on, as you see, to say that—to recognize that Dr.
45329 Viner did use that word "absolute uniformity," and that it probably was fairly used if he referred only to the fact that for a certain period of years there had been no change whatever in a number of base prices.

Q. You would not consider that as being absolute or practical?

A. If I am to assume that during a certain period there never was any slightest change whatever between these base prices, then I think it is proper to describe that as absolute within that time limit, and beyond that I do not criticize the use of the word.

Q. Now, turning to page 44775, do you find the language there where you say it would appear, Professor Viner has ignored the distinction between imperfect competition and perfect or pure competition?

A. Yes, I find that.

Q. Can you point out where he ignored that distinction?

45330 A. Yes. It refers back to the quotation on page 44770. I had already said that my answer to that question would be more easily stated if we recognize the distinction between imperfect competition or recognized that the cement industry operates under conditions of imperfect competition. Professor Viner found that there had not been during that period any price competition, that active price competition means a moving price, that it moves in response to changes in demand and supply, and that absolute uniformity and absolute constancy would not result from the spontaneous activity of a large number of individuals acting as individuals.

The point I make is that while you might expect to find some approach to that moving price in response to changes in demand and supply under conditions of perfect or pure

competition, it is not necessary to expect to find them under conditions of imperfect competition, and so my failure to find in this situation anything that would lead to an inference of collusion or combination or failure of the laws of demand and supply to be in operation was based upon the understanding that under imperfect competition you very often do not find this moving price, this constant change.

Q. Do you object to Dr. Viner's comparing the present method of marketing with the concept of perfect or pure competition?

A. I am not objecting to any comparison he makes.
45331 I am simply saying that I do not agree with the conclusion he draws.

Q. You do not point out anything unsound from your point of view in making that comparison; do you?

A. Yes, I think he is in error in assuming that these conditions as he describes them could not arise from the condition of competition.

Q. Imperfect competition?

A. Any kind of competition, he says.

Trial Examiner Norwood: He says that it could not arise; he indicates that it could not exist under perfect competition; does he not?

The Witness: No, sir; he says that there was not any price competition.

Trial Examiner Norwood: Yes.

The Witness: I have already commented on the words "price competition."

Trial Examiner Norwood: He is postulating perfect competition; is he not?

The Witness: Not precisely, Your Honor. I say he is forgetting the nature of imperfect competition.

Trial Examiner Norwood: In forgetting that, does he not assume perfect competition and makes his comparison on the difference between that and imperfect competition? Is not that what you say?

The Witness: No; not quite, Your Honor. I do
45332 not know whether he assumes perfect competition or not. He says that there was not any price competition of any kind, and my point was that if he had considered the nature of imperfect competition he might not have arrived at the erroneous conclusion at which he did arrive.

By Mr. Wooden:

Q. Do you mean to say, Doctor, that Dr. Viner was not addressing himself to the extent and nature of the imperfect competition in this industry when he compared it with the concept of perfect competition?

A. I do not find him comparing concepts of different kinds of competition. I find him saying that certain conditions here named indicate that there was not any competition.

Q. And therefore very imperfect conditions of competition?

A. No, sir. Therefore, he says the absence of competition.

Q. Would you not agree that when competition becomes very imperfect by reason of collusion there is an absence of competition?

A. In the first place, I never say that competition becomes imperfect on account of collusion, and I certainly never say that when competition becomes imperfect for any cause at all it still is not competition.

Trial Examiner Norwood: Do you mean to say that this other economist and you would not agree, if he 45333 accepted your definition of imperfect competition?

The Witness: Why, yes, Your Honor. I was going to find an excuse, really, for Dr. Viner's arriving at this erroneous conclusion, in the fact that he overlooked imperfect competition; but there is no way in which he and I could agree here, no matter how we defined our terms, because he said there was not any competition—any price competition. It does not make any difference how you define competition or classify it. His statement was that there was no price competition.

Trial Examiner Norwood: The main point of disagreement, then, is that he says that imperfect competition is not competition and you say that it is competition.

The Witness: Not at all, Your Honor, but he does not even mention imperfect competition.

Trial Examiner Norwood: Well, I wanted to know if, in fact, that was not the point.

By Mr. Wooden:

Q. Is it not just a difference in words, more than anything else, Doctor?

A. No; it is a very vital difference in substance. Dr.

Viner says in this quotation that he would conclude from the facts as stated that there had not been during that period any price competition. Now, I have tried to clarify my answer by suggesting that if Dr. Viner thought about imperfect competition, perhaps, he would not have
45334 made this mistake, but he has said positively that there was no price competition. I say that no such conclusion is warranted from these facts, and it does not make a bit of difference how he and I define competition.

Q. You say—

Trial Examiner Norwood: If he intended to imply that there was no perfect competition present, you would agree with that; would you not?

The Witness: Well, he does not say or imply that.

Trial Examiner Norwood: If he should, you would agree with that; would you?

The Witness: Let me see just what he says. If he had said that these facts showed that during that period there was not perfect competition—is that it?

Trial Examiner Norwood: Yes.

The Witness: I would not be able to tell from these hypotheses. It is still possible to conceive—

Trial Examiner Norwood: You would agree with that, would you not?

The Witness: No; I would not be able to agree. There is not enough—

Trial Examiner Norwood: Perhaps, you said the same thing—

The Witness: No, I have said that the competitive condition in the cement industry is one of imperfect
45335 competition, and, therefore, the absence of this moving price in relation to changes in supply and demand, and so forth, is not so difficult to understand as it would be if the conditions were of perfect competition.

Trial Examiner Norwood: I will declare a short recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. Wooden:

Q. Doctor, do I understand from your last answers that you see a logical objection to another economist comparing the present system with the concept of perfect competition and concluding that the present system is conclusive and that you think it is logical for you to compare the present system with the concept of perfect competition—

A. No; begging your pardon—

Trial Examiner Norwood: Let him finish his question.

The Witness: I said nothing of that sort.

By Mr. Wooden:

Q. (Continuing.) For you to compare it with the concept of perfect competition and conclude that the theories applicable to perfect competition apply here, but, nevertheless, this industry is one of imperfect competition? Is that your position?

Mr. Porter: May I have that question read?

45336 Trial Examiner Norwood: Read the question.

(Question read.)

A. In the first place, I am sorry I interrupted. I thought the Counsel had finished his question.

My answer is that I did not say any such thing as has been now stated in this question. I think the record will show what I have said on this point.

By Mr. Wooden:

Q. Well, do you say this is not your position—what I put in the question?

A. I say it is not a correct statement of my position.

Q. Which part of it is incorrect?

A. Well, it is a long question. Perhaps, you will have to read it again.

Trial Examiner Norwood: I think if you will divide that question up he will be able to answer it directly.

Mr. Wooden: Do you mean for me to divide it up?

Trial Examiner Norwood: Yes, if you want to know what further he does not agree with.

Mr. Wooden: I think that would be better.

By Mr. Wooden:

Q. Is it your position that another economist is not pursuing a logical economic course of reasoning by comparing the present system with the concept of perfect competition and concluding that the present system is a collusive one?

45337 A. Yes; I think his conclusion is erroneous.

Q. But you think the method is all right; it is a logical method of approach; is that it?

A. I do not think he has used the method which you have named. I do not accept your statement of the method that he has used. I do not know what his method was.

Q. You do not know what his method was?

A. All I know is that I have been given a quotation of his, in which he arrives at a conclusion which I think is erroneous.

Q. After comparing the present method with the concept of perfect competition?

A. There is nothing in this quotation that justifies my assuming that.

Q. You said that that was what he was saying—he was comparing the present system with the concept of perfect competition.

A. No; I said on page 44775 that:

"It would appear that Professor Viner has ignored the distinction between imperfect competition and perfect or pure competition."

That is all.

Q. Well, do you now say that Professor Viner did not compare the concept of perfect competition with the present marketing method?

A. I say I do not know.

45338 Q. You read his testimony and you do not know.

A. There is nothing in that quotation that gives me any basis for knowing what kind of a comparison he may have made.

Q. Well, what you have done, is it not, is to compare the concept of a perfect competition with the present method and say that the concepts of perfect competition apply to the present method? Is that right?

A. I do not know where I said that.

Q. You say you have not said that, in substance, anywhere?

A. I cannot remember that I said, in substance, that methods of perfect competition apply to the—

Q. Concepts.

A. (Continuing.) —the concepts of perfect competition apply to the conditions of the cement industry as laid before me. I have definitely said—

Q. You say it is imperfect competition?

A. I have definitely said that the cement industry, on the basis of the hypotheses before me, appears to be operating under conditions of imperfect competition, as I have defined that concept.

Q. When you say on line 20, page 44775, that the absence of constant fluctuation did not set up in your mind a

necessary inference of collusion or lack of competition, did you mean to say that it would not even tend to indicate such a condition?

A. Yes; I did.

45339 Q. And when you say the same thing on page 44779, line 23, where you said it does not require a necessary inference of collusion, did you mean to say that it does not bring to your mind any logical tendency in that direction?

A. Well, I do not use the word "tendency" in the way you seem to be using it. I do not know what you mean by a logical—was your phrase "a logical tendency towards collusion"?

Q. A logical tendency indicative of collusion, in substance.

A. I do not see that that means anything more than an inference.

Q. A logical reasonable inference. The point is you use the word "necessary," and I am trying to find out whether you ruled out in your mind reasonable inferences as distinguished from necessary inferences.

A. I do not mean to stress the word "necessary." I can say that it does not require an inference of collusion.

Q. Now, with reference to this condition that was assumed, beginning on page 44776, about the increase in prices in the Middle West during 1932, let us assume, Doctor, that in July, 1932, the prices, the base prices, advanced 40 cents a barrel, that that advance was maintained, and in December, 1932, a 10-cent advance was inaugurated and maintained; and that in February, 1933, another 10 cents was added and maintained, and that in July, 1933, another increase of 25 cents a barrel was added and maintained, bringing about a base price of $1.60 in July,

45340 1933, as compared with a base price of $1.50 to $1.60 in 1930. Can you cite any economic theory that would explain that series of successive increases in the face of adverse conditions of supply and demand which existed during that period?

Mr. Bond: I assume, Mr. Wooden, when you use the word "maintained," in that question, you do not mean by collusion, but simply established?

Mr. Wooden: That is right.

A. Well, I, of course, do not know anywhere nearly enough of the facts of the record of the cement industry

during this period to undertake to explain all of these changes and acts on the basis of economic theory. What I say is that I do not find in those facts anything to lead to an inference of collusion, and I have suggested that when prices get very low, some time or other prices generally tend to rise, and when prices rise it does not mean that there has to be a condition of collusion.

Q. Do you have in mind any parallel case during that period of time?

A. No; I do not right offhand.

Q. If prices increased successively during a period while the demand is increasing, and if that condition is not significant to an economist, how can an economist help in determining whether any economic principles are being violated?

45341 A. Do you wish me to assume that changes in demand and price are not significant to an economist?

Q. No.

A. That seems to be—

Q. I say, when prices go up at the same time that demand is going down, if that is not significant to an economist how can an economist be of any assistance in determining whether economic principles are being violated?

A. Well, your question still contains, does it not, the assumption that that matter is not significant to an economist?

Q. Well, it contains—

Trial Examiner Norwood: It assumes that prices are going up while demand is going down, and that this means nothing to the economists, as far as their being able to determine the presence or absence of collusion is concerned?

The Witness: Well, that is putting a little more into the question than it contained.

I do not accept the hypothesis that matters of that sort are of no concern to the economist, and so I find it very difficult to answer a question which contains an hypothesis which I cannot accept.

By Mr. Wooden:

Q. Then, you do recognize, as an economist, that a condition of successive price increases in the face of decreasing demand is significant economically?

45342 A. All changes in price and all changes in conditions of demand are significant to the economist.

Q. Do you not recognize that that runs counter to the generally accepted principles of economics?

A. I see nothing in any hypothesis before me there that runs counter to the principles of economics.

Q. Do you mean to say that prices going up while demand is going down does not run counter to any economics?

A. No; prices are determined by the joint action of demand and supply and are not determined by demand alone, where they are determined by supply and demand.

Q. On page 44780 you testified that you doubted very much that there was such a thing as a typical competitive method. Have you not been testifying that the present marketing method conforms to the typical phenomena of pure competition in a free market?

A. I do not think so. I do not think the record will show that I used the word "typical."

Q. I do not say that you did use the word "typical," but aside from that, Doctor, will you answer the question?

A. My thought was to answer the question.

Trial Examiner Norwood: Read the question to him.

(Question read:)

A. My answer is no, because I have not used the word "typical," as I recall, in my answers.

45343 Q. You have not intended to use the thought that the word "typical" conveys?

Mr. Bond: Oh, does Your Honor think that that is quite a fair question?

Trial Examiner Norwood: Let me get his meaning there.

Mr. Bond: Has he anywhere, in five days, used a thought that resembled that idea?

Trial Examiner Norwood: He may ask him that. It goes to his definitions.

A. I cannot recall that in any of my answers to questions asked here I have based the answer upon the concept of typical competitive methods.

By Mr. Wooden:

Q. You have been testifying about the reactions of prices in a state or condition of pure competition, Doctor.

A. I have defined "pure competition" and explained it at some length; yes.

Q. And when you talk about the reaction of the prices in a state of pure competition, are you not talking about

the typical reaction of prices in a condition of pure competition?

A. No, sir; I am not, because I am not talking about typical competitive methods, which is the phrase that I was asked about, because I cannot see that there is any typical competitive method.

Q. And there is no typical reaction of prices in
45344 a state of pure competition?

A. In a state of pure competition we have economic laws that say that under such and such conditions, such and such results will follow. We do not say that those are typical.

Q. All right.

Now, referring to page 44781, where this statement was read to you as a part of Dr. Fetter's testimony:

"The word 'delivered price' is a compound term meaning both the price of the cement and the price of the freight necessary to transport the cement from the place at which it is sold to the destination."

Now, do you disagree that delivered price is a compound of freight and cement?

A. No, I do not.

Mr. Porter: Your Honor, I wonder if the witness understood that question.

Trial Examiner Norwood: Yes; I think so.

Mr. Porter: May we have the question read?

Trial Examiner Norwood: He has answered it.

Mr. Porter: But I do not think he understood the question.

Trial Examiner Norwood: Read the question and the answer as far as he has gone.

(Question and answer read.)

A. No. The answer is I do; I do disagree.

45345 By Mr. Wooden:

Q. Do you disagree that the delivered price is a compound of cement and freight?

A. I disagree that delivered price is a compound of freight and cement, because I do not think of price as being obtained by adding together various elements of cost. I might add I think that price is the price of cement, not the price of cement and freight.

Q. Would you say that price is made up of the various cost elements, plus profit?

A. That is not the way price is determined. The cost elements and profit have a bearing upon the forces which determine price. The price is determined by the play in the market of the forces of demand and supply and the actions of the sellers.

Q. Then, why do you say, on lines 5, 6, and 7, on page 44782 that:

"... the price comes right back to an item which covers all costs necessary to deliver the goods to the buyer at destination."

A. That was to bring out the fact that there is no peculiar relation of freight to price as compared with other costs, and that when a seller tries to get a price that will cover his costs, freight comes in, like other costs.

Q. Even though he never pays out a cent for freight, and does not know what the railroad receives for the freight?

45346 A. Well, even so, he may calculate the freight in his cost accounting system, and then credit the payment made to the railroad by his buyer.

Q. And in doing so he would be merely taking a certain step, and then taking a step exactly in the opposite direction, cancelling what he has done in the first step?

A. He would take a very common act in cost accounting, by entering some item on the two sides of the account.

Q. Do you assume that the cement industry has handle its cost accounting that way?

A. I am not aware of the facts as to their cost accounting system.

Q. Did you ever give any advice to the industry to the effect that it should be handled that way?

A. No.

Mr. Bond: Oh, if Your Honor please, I object.

Trial Examiner Norwood: The objection is overruled. He has answered.

By Mr. Wooden:

Q. Did you ever participate in any conferences at which the advisability of handling it that way was discussed?

Mr. Bond: Now, if Your Honor please, his questions are beyond the fair point. Here is a man of standing at one of the leading universities, who comes here as an eco-

nomic expert, and the insinuation is that he re-
45347 cently, or years ago, was a part of this conspiracy.

Trial Examiner Norwood: I do not think that this witness' advice would be privileged in any way. He is not an attorney at law.

Mr. Bond: Does Your Honor think there is any profit in going into a thing of this sort? It is absurd, and I think it is hardly fair to the witness.

Trial Examined Norwood: It may throw some light on his attitude.

Mr. Bond: Yes; it will throw entire light on the whole situation, but the insinuation is resented.

Trial Examiner Norwood: No, I do not think so.

Mr. MacIntyre: If Your Honor please, aside from alleged insinuations, it goes to the point that the last few answers of the witness, as to the knowledge upon which he bases the opinions which he claims to be giving here—

Trial Examiner Norwood: Well, I will overrule the objection, anyway. Let him tell us about it.

The Witness: What is the question?

Trial Examiner Norwood: Read it.

(Question read.)

A. No; I never did.

By Mr. Wooden:

Q. Do you know anything about any conferences at which any suggestion was made that the accounting
45348 should be handled that way?

Mr. Leisure: The same objection.

Trial Examiner Norwood: Objection overruled.

Mr. Bond: Your Honor recalls that he says he does not know how it is handled.

Trial Examiner Norwood: Overruled. Let him answer.

A. No; I know of no such conferences.

By Mr. Wooden:

Q. Now, referring to page 44782, where you say that the consensus of economic opinion represented by 91 economists whose works you have studied, and more than a hundred books, is overwhelmingly against that opinion, meaning by that the testimony given by Dr. Fetter that was quoted from the record on page 44781, do these economists whose support you invoke for your position say that delivered price does not include the price of the com-

modity and the price of the freight to get it from the market to some other place?

A. Of course, they use not all of the same language. There is a great variety of terms used and language used by these various economic writers. What they do say, almost without exception—

45349 A. (Continuing) —is that the price of a product is its price delivered at the market at which it is bought and sold, and that it is not a freightless price, and that that is the price of the article, and, furthermore, that there is a tendency for that price at that market to be uniform under conditions of competition.

Q. Now, Doctor, will you answer my question as I put it?

A. The difficulty in answering it other than I have is the great variety of terminology used by these different economists, and I have tried to state the substance of—

Trial Examiner Norwood: Please read the question.

(Question re-read.)

Trial Examiner Norwood: No, answer that directly, please.

Mr. Bond: May we have the answer read?

Mr. Wooden: He has not answered it.

45350 Trial Examiner Norwood: No; I do not want the answer read. Give us a direct answer to that, as nearly as you can.

The Witness: Well, I am still—

Trial Examiner Norwood: Do they claim that?

The Witness: Let me hear that exact language again.

Trial Examiner Norwood: Read the last part of the question, Mr. Reporter.

(Record read as follows:

"Do these economists whose support you invoke for your position say that delivered price does not include the price of the commodity and the price of the freight to get it from the market to some other place?")

Trial Examiner Norwood: Do they or do they not?

The Witness: Say that it includes the price of the commodity and the price of the freight?

Trial Examiner Norwood: Yes.

Mr. Wooden: Delivered price.

The Witness: They do not express it in that way. They do not use just that language.

Trial Examiner Norwood: That answers it.

By Mr. Wooden:

Q. Do they say it, in substance?

A. I was trying to say what they say in substance.

Trial Examiner Norwood: Well, do they say 45351 that, in substance?

The Witness: The whole question here is on the matter of terminology—

Trial Examiner Norwood: Can you answer that, or not? Do they say that in substance, or do they not?

The Witness: Let me hear that once more.

Trial Examiner Norwood: Read it once more.

(Question re-read.)

A. They do not say that because they do not think of the price as being the price of the commodity and the price of the freight.

Trial Examiner Norwood: All right.

Mr. Wooden: All right.

By Mr. Wooden:

Q. They do not say that, and in that respect they do not differ with Dr. Fetter?

Now—

Mr. Bond: Is that a question?

Trial Examiner Norwood: What is that?

Mr. Wooden: That is a question, yes.

Mr. Bond: Well, then, let us have the answer.

Trial Examiner Norwood: Is that true or false?

Mr. Porter: We are getting on the radio now.

A. They there differ with Dr. Fetter because he definitely speaks separately of the price of the cement 45352 and the price of the freight.

Trial Examiner Norwood: All right.

By Mr. Wooden:

Q. You say they do not say that the delivered price does not include the price of the commodity and the price of the freight to get it from the market to some other place?

A. Well, because they—

Q. They do not say that?

A. They do not use those terms. They do not think of the delivered price or the price at the point of delivery as being the sum of the two prices, the price of freight and the price of cement which Professor Fetter does, and, therefore, I find them in disagreement with Dr. Fetter.

Q. Do these economists whose support you invoke on that page say that the price of a commodity in a market includes the cost of transporting it from that market to some other place?

A. No, they do not generally say it.

Q. Now, referring to page 44788—

Trial Examiner Norwood: Now, I want to say that I think that this testimony about these 91 economists is in very satisfactory shape. Part of it was objected to and ruled out, and the other part was let in, but here part of it is on cross-examination. It is not in the record as to just what books take those positions, or anything about it.

However, I think a reference to these articles is in
45353 one of the exhibits.

Now, I do not think it is in shape where it could be of any benefit to the Commission.

Mr. Wooden: Well, Your Honor, just to make the issue clear, I would say that the testimony of one economist as to what other economists say is improper and it is hearsay and incompetent.

Trial Examiner Norwood: That is the idea.

Mr. Wooden: I refer to a textbook on "The Expert Witness," by Mundell, and citing cases in support of his position, on page 61, he says that it is not proper—

Trial Examiner Norwood: Well, I have taken that position right along, and I told this witness to only tell us what the consensus of opinion among these scientists should be, and that is something he could only testify to, something that is generally accepted.

Mr. Leisure: That is right, and I do not believe even Mr. Wooden will dispute that an expert can do that. He can give his opinion of what the majority opinion is in his—

Trial Examiner Norwood: Well, I would not say the majority.

Mr. Leisure: Well, the weight of authority.

Trial Examiner Norwood: I only say that I think the whole is in unsatisfactory shape.

45354 Mr. Wooden: I would move, therefore, Your Honor, to strike all of the testimony of this witness as to what the consensus of opinion of other economists is, and what the opinion of any particular other economist is as being incompetent because of being hearsay, and not giving us the opportunity to examine or cross-examine the

makers or writers of those statements which he would put in, which this witness would seek to put in. I have already asked this witness to produce the things, the citations which he says support his position, and I, of course, shall expect to insist upon that, unless the evidence that I refer to is stricken.

Trial Examiner Norwood: Can the witness produce the articles?

Mr. Brick: Is there a motion pending, Your Honor?

Trial Examiner Norwood: Yes.

Mr. Brick: Well, what does the motion relate to? As I understand, it is a motion to strike, that is now pending?

Trial Examiner Norwood: I understood it to be a motion to strike, yes.

Mr. Brick: Don't you think we ought to take it step by step and see what it develops?

Trial Examiner Norwood: I think we are taking it that way. I am asking the question now as to whether
45355 or not these articles are available for verification.

Mr. Leisure: Well, if Your Honor please, Mr. Wooden, when court adjourned over the week end, challenged this witness to support his opinion with the authorities. The witness came back expecting to be questioned further on that, and is prepared to answer. Mr. Wooden, however, up to the present moment has not seen fit to give him an opportunity to do so.

Now, on the point of moving to strike this testimony at the present time, I interpose two objections to that. I do not understand that Mr. Wooden can bring out something on cross-examination and then go along and cross-examine at length on it to see whether or not it will turn out favorable to his side of the case, and then after he determines that it is unfavorable to his side of the case move to strike at that time. I do not understand that that is proper procedure, neither do I understand that it would be proper law or good law to strike the opinion of an expert where he states, as this expert did, that in his opinion, based on his studies, the authority in his field, and the consensus of opinion is along a certain line, I understand that to be proper testimony for any expert, and I understand that this witness did not go beyond that, so we oppose the motion on the grounds that I have stated.

45356 Trial Examiner Norwood: Well, I shall reserve a ruling on this motion until we can see whether or

not something definite in regard to this can be put before the Commission, but unless something definite is put before the Commission I will give serious consideration to allowing the motion to strike it; that is, anything beyond what he said about the consensus of opinion and which he has told us in the absence of objection.

Mr. Leisure: If Your Honor please, I am not quite sure when you say "anything definite that can be put before the Commission"—

Trial Examiner Norwood: Yes.

Mr. Leisure: As I understand the province of cross-examination, it is that when an expert testifies that the great majority and the consensus of opinion is one way, it is the province of cross-examination to show that he is mistaken about that if he can. Now, that is all the definiteness that is required, as far as I know, from an expert. It is not necessary for the expert to come in and bring in all of his learning over the period of years and put it in tabular form so that all of his education may be reviewed by the Commission, that I do not understand to be necessary.

Trial Examiner Norwood: I know, but here is information within your power to produce here to render
45357 this definite and certain about it, and unless this is put in I will consider striking it.

Mr. MacIntyre: If Your Honor please—

Trial Examiner Norwood: We cannot go any further. There is no use going any further with this now, but let us proceed with the cross-examination and see if these exact citations can be made by this witness to substantiate that is given on page 44782 and following.

Mr. Wooden: Well, the witness has just agreed that these economists do not say what I posed in my questions.

Q. Now, referring to page 44788, you were asked whether you agreed with certain testimony of Dr. Fetter which was paraphrased in the question put to you.

Mr. Leisure: What page, please, Mr. Wooden?

Mr. Wooden: Page 44788.

By Mr. Wooden:

Q. First, Doctor, referring to the second line of your answer in the middle of the page, where you say, "I don't agree that the general principle that the price"—do you see that?

A. Yes.

Q. Shouldn't the word "is" be inserted there between "principle" and "that"?

43358 A. No, Mr. Wooden. The stenographer's error is in the next line. The period after the word "uniform" should be stricken and the next line "it" should be stricken.

Mr. Bond. The next word "it"?

The Witness. The next word "it," so that it will read, "I don't agree that the general principle that the price of a homogeneous commodity in a given market at a given time tends to be uniform does not relate to goods sold under the basing-point system." That is a denial of the testimony of Dr. Fetter as quoted or paraphrased above.

Mr. Wooden. All right.

Q. Now, did you assume from the paraphrases of Dr. Fetter's testimony put in the question that he was testifying that economists considered a market only as a place where all the buyers and sellers are present?

A. The language given to me was he stated that in that kind of market that economists conceive in studying this general principle they thought of all buyers and sellers being gathered together in one spot.

Q. You understood, then, Dr. Fetter to testify that economists consider a market only as a place where all buyers and sellers are present?

A. That is about the substance of what I infer from this as my answer shows. I did not agree with the

43359 idea that in the kind of market that economists conceive in studying this general principle, that is the principle that under free competition prices and so forth tend to be uniform, they thought of all buyers and sellers being gathered together in one spot.

Q. Well, now, I will refer you to page 17686, which is the transcript of Dr. Fetter's testimony that was paraphrased in Mr. Bond's question, and I will ask you what portions of that testimony, beginning on line 15 and running to the end of the page, you disagree with?

A. "Any market as described there," can you help me any as to what that refers back to?

Q. I think it refers to a concept of pure or perfect competition in a competitive market.

A. He says, "In a market as described there there is effective competition."

Q. Meaning the economist's idea of a competitive market the way I interpret it.

A. I still have difficulty in understanding what he means by "as described there." He says that, "In a market as described there there is effective competition," but I do not know what he means by a "as described there," and in looking back over a couple of pages of record I do not find anything that clears it up.

Q. It goes back to the concept of tendency of uniform price on a standardized commodity under conditions
45360 of effective competition,

A. Then he says there is effective competition.

Q. Yes, and he makes that statement in comparing it with the basing-point system.

A. That seems only to mean that if there is effective competition there is effective competition. Of course, I would not disagree with that, if that is the—

Q. Well, he was saying there was not effective competition on a basing-point system.

A. Yes, I see he says that plainly enough.

Q. Go on, after that, wasn't he there treating of the ideal market as a condition rather than a place?

A. I say, I cannot tell what he means by "as described there."

Q. Well, pass that by and go on with his testimony, and isn't he treating of the ideal market under competitive conditions, considering it as a condition and not as a place?

A. He says in the basing-point system there is not effective competition.

Q. Yes, go on.

A. Then he says in the economist's typical or ideal market all buyers and sellers of that region are gathered together in one market. That was the statement which as paraphrased in the question to me I was disposed not to agree with, because I can visualize a situation in which the buyers and sellers are not all present at that market, but—

45361 Q. Didn't Dr. Fetter go on to say that they need not actually be present but that they were permitted to gather?

A. He say here they are gathered together.

Q. Keep on. Doesn't he say they are allowed to assemble at one place?

A. Yes, but that does not—

Q. And doesn't he go on to say they need not be physically present somewhere?

A. I do not find that.

Mr. Bond: Is that what you mean by its being a condition and not a place?

Mr. Wooden: No.

The Witness: You see, when he says they are allowed to assemble that does not weaken any the previous statement that they are gathered together.

By Mr. Wooden:

Q. Well, under the typical, ideal market known to the economists, historical at any rate, they were gathered together, weren't they?

A. Well, that was not the question I was asked, and that is not, strictly true, because in many markets the buyers and sellers are not gathered there together.

Q. Well, you have agreed that the economists's concept of a market may well be that of a condition rather than a place, haven't you?

45362 A. I do not think that I have agreed to it in that term; what I have said is that most economists define a market either as a place where buyers and sellers bring together the forces of demand and supply and determine the price, or a region in which that takes place. Now, I would not want to say that there is no economist who says that a market is a condition.

Q. Haven't you said it in your writings?

A. I may have said it, referring to the condition in which we are not interested, but not in any sense of denying it is a place. We are interested in the place of the market, and in the conditions that prevail in the market.

Q. After all, the conditions that prevail are more important than the place where the market is, aren't they?

A. Well, we are now discussing the definition of a market.

Q. Yes.

A. And that does not seem to be pertinent to that.

Q. I think it is very pertinent to that, Doctor, if you will excuse me.

Mr. Bond: Well, that is interesting.

Q. Aren't the conditions of a market more important than the geographical location of it?

A. I do not know how to compare two unlike things like that.

Q. Now, when on page 44789, line 24, you said that rigidity of prices would not produce a necessary inference
of collusion, did you there mean that it had no logical
45363 or reasonable relation to collusion?

A. Well, I think once more my answer could be stated without the use of the word "necessary," just say "does not produce an inference of collusion."

Q. Can you point out any parellel in your experience between the or with the rigidity of price between 1933 and 1938 in cement during that same period of time?

A. No, I have not the facts at my disposal to point out a parallel. I have not even the facts about the cement industry except in a very limited way they are stated in the hypothesis of this question.

Mr. Bond: I remember Your Honor excluded testimony that we offered along that same line; we were not permitted to go into that.

Mr. Wooden: There is a good deal, Mr. Bond, that can be asked on cross-examination without raising an issue than can be raised on direct.

Trial Examiner Norwood: Go ahead.

By Mr. Wooden:

Q. Referring to page 44791, lines 4 to 6, were you there assuming that the industry was coming out of the depression in July, 1932?

A. The question asked of me referred to a quotation from Dr. Fetter's testimony in which he referred to the
ability to raise prices by that amount in the very
45364 depths of the depression was indicative of a power of control over prices. Now, my answer goes back to his phrase "in the depths of depression," and I do not have to infer that industry was coming out of the depression in order to fail to draw a conclusion, an inference of collusion, because there are those conditions which might bring about a rise in prices, and with the rise in prices then occurs, it does not necessarily mean that the industry is in a state of combination or collusion.

Q. No, but you talk about—you associate it with a rise in prices when an industry was coming out of the very depression—lines 4 and 5. Were you assuming here that the industry was coming out of the depression when it raised prices 40 cents a barrel in July, 1932?

A. I was only saying that if starting in the depths of depression I found prices rising it would not lead me to

draw an inference of collusion because prices do rise out of depths of depression.

Q. After the depression is on the way out, you mean?

A. Well, it may or may not be on the way out, but sooner or later when prices are in the depths of the depression we have a rise of prices.

Q. Suppose you were to assume that the rise in prices here came despite decreasing demand for the goods.

A. That would not change my answer.

Q. And before the general depth, or the depth of 45365 the general depression was reached.

A. That would not change my answer. It might change the pertinence of the one observation I make here, my answer would be the same.

Q. And taking on page 44791, lines 20 to 22, you said the price in which the economist is interested is the delivered price, reimbursing the seller for costs, all costs incurred to deliver the good to the point of use, or delivery, and therefore includes freight as well as any costs. Were you assuming there that a seller of cement had made an outlay for the cost of transportation for which he was being reimbursed?

A. Not in precisely those terms.

Q. Why did you use the word "reimbursing"?

A. Because as I have been using these terms, the price to me means the delivered price, and that price when it is related to costs at all is related to all costs, including the cost of transportation. Now, the seller may, instead of receiving that whole price directly, himself, and himself paying the freight, make arrangements by which part of the price is paid directly by the buyer to the transportation company, and my point is that that freight element is a cost of getting the goods to the market whether it is paid directly by the seller or paid indirectly through being paid on his account or for him by the buyer.

Q. Won't you agree that using the word "reim-
45366 bursing" conveyed the idea that the seller had made an outlay for which he was being recompensed later?

A. Well, only in the sense in which I have just explained it, the seller—

Trial Examiner Norwood: He is reimbursed because he had figured it in the price?

The Witness: He had figured it in the price, and in some cases it may have been the whole price may have been paid directly to him; in other cases that part of the price which

reimburses freight may have been directly to a freight company. I should make clear in addition by reimbursing the seller I do not mean that the seller has any claim against anybody to have all his costs reimbursed, but this whole point has run to the relationship between the price and the costs.

Trial Examiner Norwood: He was economically reimbursed?

The Witness: Well, I use the word "reimburse" to mean that the price so far as it relates to cost at all covers all costs, and not part of the costs, and that freight is not a separate one, and going further by saying it reimburses the seller I mean in the general analysis of industry in the long run we expect under ordinary conditions that prices will in the long run reimburse producers and middle
45367 men, sellers in general, for all their costs. It is in that general sense as expressing fundamental economic principles that I use the word "reimburse." I did not want there to be any misunderstanding here.

By Mr. Wooden:

Q. You would use the expression "reimburse the seller for costs" even when they were costs that the seller had not actually incurred and paid out, wouldn't you?

A. Under such conditions as I have just explained.

Q. Doctor, assuming just for the sake of the question that the method of marketing employed here is collusive, do you mean to say that the economist would not be interested in what amount of money the mills are each getting in the form of their mill nets?

A. I would remind you that this whole question and answer, and I believe several questions and answers here are directed to what is meant by price in relation to the laws of demand and supply that determine price, and the market, and all that, and my answer here means that from that point of view the economist is interested in the delivered price rather than in the mill net. Now, if you ask me if under any consideration at all the economist would be interested in mill net, the answer is yes, there are various problems in which the mill net would enter and in which the economist would be interested.

Q. And assuming a condition of collusion, the economist would be interested in the mill net?

45368 A. I do not see that that makes any difference here. I am talking about his interest in the theory of price.

Trial Examiner Norwood: Well, but is his statement correct with respect to collusion?

The Witness: Well, his statement now is, I believe the general question whether the economist is interested in mill nets, and I have said he might be interested under any conditions.

Trial Examiner Norwood: Well, under the conditions, the hypothesized conditions, the conditions of the hypothetical question.

The Witness: Yes, Mr. Wooden's question now is not related to the theory of price, I believe, but he asked me if economists would ever be interested in mill nets, assuming a condition of collusion.

By Mr. Wooden:

Q. Yes.

A. I think they would be interested in mill nets under conditions of collusion, combination, free competition, any condition, if they happened to be studying some problem to which that was pertinent.

Q. Well, assuming a condition of collusion, wouldn't the buyers be interested in the amount the mills were each getting in the form of mill nets?

A. No, I still think that buyers are interested in 45369 the price they pay for cement delivered to them.

Q. In other words, buyers have no interest in knowing how much they were paying directly to the mill as distinguished from what they paid the railroad?

A. I have already testified to that.

Q. That is your testimony, buyers would not be interested even if collusion were assumed to exist; is that right?

A. Yes.

Q. All right. In the—

Mr. Bond: Did you understand the question, Professor? Would you read the question to him?

Trial Examiner Norwood: Read the question.

(Question and answer read.)

A. My answer is that buyers are interested in the delivered price. Now, I do not mean to say that buyers might not be interested in inquiring into a state of collusion as you have described it to me, and that might lead them into all sorts of inquiries.

By Mr. Wooden:

Q. And into mill nets involved?

A. That might be, if they became involved in an investigation of collusion.

45370 Washington, D. C.,
Thursday, October 3, 1940.

45371 FRED R. FAIRCHILD thereupon resumed the stand and testified further as follows:

*Cross-Examination (Continued) by Mr. Wooden:*

Q. Dr. Fairchild, referring to page 44792, where you testified that Dr. Fetter apparently denies that there should be any price of cement except at the mill location, and, therefore, there could not be any price of cement in New York City; do you see that?

A. I do not have the copy before me just now.

(Mr. Bond hands transcript to the witness.)

Q. Do you see it?

A. Yes, I am looking back to see the question.

45372 Yes, I find it.

Q. Now, wouldn't you concede the reasonableness of saying that there is a price of cement in New York City or to New York City purchasers but that it is the mill net for New York City delivery?

A. No, that would not seem to me to be a reasonable statement.

Q. In other words, you would say that there can be no price of cement in New York City if one says that the price there is the mill net for New York City delivery?

A. No. My principle is that the price is as of the market where the goods are sold or delivered.

Q. Would you say that the buyer in New York City could not make his market ever at his own desire anywhere else than in New York City?

A. I do not think he could unless, of course, he went to the other place and bought it f. o. b. mill at that other place.

Q. Well, when you say he could go there, he would not have to go physically, would he? Couldn't he just send a letter?

A. Yes, if you transfer the market to that other place, but that comes back again to the fact that there is not a market or a price in New York.

Q. Even though the buyer wanted to make the market

at the mill, why, he just has to have the market in New York, does he?

A. He has to have the market in New York if he is buying cement to be delivered to him in New York. If
45373 on the other hand he wants to go to some other place to buy cement in some other market, then he can talk about the price in that other market.

Q. Now, on the same page you were referred to Dr. Fetter's testimony that under the basing-point system of delivered prices there was no market in the economic sense. Did you refer to Dr. Fetter's testimony on the pages given in the question? Had you referred to it before you answered the question?

A. No. I had taken the statement of the question itself as paraphrasing Dr. Fetter's testimony.

Q. Well, I will show you page 17722 of the record, and ask you whether Dr. Fetter did not explain his statement that there was no market in the economic sense under the basing-point system of identical delivered prices by saying that there was not independence of action and there were not some of the other elements that are present in a competitive market?

A. Well, I observe here that he was asked this question; "under the basing-point system of identical delivered prices, where is the market in an economic sense"?

Q. Yes.

A. "There is no market in an economic sense."

Q. Yes.

A. That is the statement which I believe was put to me in the question.

Q. That is right.

45374 A. And which I answered.

Q. But I am asking you if he did not explain there what he meant by saying there was no market in the economic sense?

A. You want me to go on in his further testimony?

Q Yes, and explained that because it lacked some of the essential elements of a competitive market.

A. (The witness is reading the transcript:) Well, he seems here to be describing a competitive market, but that does not seem to explain away his statement that under the basing-point system of identical delivered prices there is no market.

Q. Wasn't he treating the market as a condition rather than as a place, in his testimony?

45375 A. I cannot tell from that testimony how he was treating the market. He says flatly that there is no market.

45376 By Mr. Wooden:

Q. But in the remainder of the page, when he explained what he meant, wasn't he treating "market" as a condition rather than as a place?

A. I would not say so. As I read his next answer, he is giving a description of a competitive market.

Q. All right.

A. In fact, he starts right out, "a place." There is no question about his regarding the market as a place.

Q. Doctor, would you say that one who uses the word "market" as a place is using it in a more restricted sense than one who uses the word "market" as both a condition and a place?

45377 A. Well, I think that a definition of a market which does not take any account of the place is a vague definition; whether it is more or less restricted I find it hard to say.

Q. Well, isn't it a more restricted sense to use it as a place than as both a place and a condition?

A. Well, I would want to see an exact statement of somebody's definition if I want to compare it with somebody else's definition.

Q. You don't need any definition to answer my question that I can see.

A. I cannot tell whether a market defined in one way is more restricted than another, without seeing just what the particular author's definition is.

Q. Did you think that you were using the word "market" in a broader sense when you treated it as a place than Dr. Fetter was using it when he treated it as both a place and a condition?

45378 A. Well, answering this question, I had before me the question and nothing else, and I was told that Dr. Fetter had testified that there was no market in the economic sense.

By Mr. Wooden:

Q. And he did.

A. I did not know beyond that as to what his definition of "market" was.

Q. All right.

A. He says there is no market under any definition, I suppose.

Q. Do you go on, on that page, and say that the overwhelming consensus of opinion of economists is in disagreement with that statement of Dr. Fetter's about there being no market in the economic sense?

A. Yes, I do.

Q. Do you again cite 91 economists whose writings you had examined?

A. Yes.

Q. Can you cite me to the page and paragraph and line where those economists say that under the basing-point system of delivered prices there is a market in the economic sense?

A. Most of those economists do not use the term "basing-point system," but they discuss this whole matter of the market and what it is, where it is, and from their discussion I am able to conclude that with the exception of two or three, more or less, they would not agree with
45379 Dr. Fetter's statement that there is no market.

Q. You are not willing to say, now, that those economists have written that under the basing-point system of delivered prices there is a market in the economic sense? You are not willing to stand by that now?

A. I just answered that question.

Q. You did not.

A. That most of these economists do not use the term "basing-point system," but they do not have to use that term in order to enable me to judge from their writings that they would disagree with the statement that under conditions described as the basing-point system there is no market in the economic sense.

Q. Can you cite any of them who have said in their writings that there is a market in the economic sense under the basing-point system of delivered prices?

A. I cannot recall now whether I can cite any one who has used exactly that term.

Mr. Bond: Does Counsel mean the exact words that he is formulating?

Trial Examiner Norwood: No, no.

Mr. Wooden: No.

Trial Examiner Norwood: That is all perfectly clear and plain.

The Witness: I supposed that Counsel meant
45380 these exact words, "basing-point system." If he only means—

By Mr. Wooden:

Q. No.

A. —the general condition of marketing described?

Q. I mean the thought conveyed by my words.

Trial Examiner Norwood: Let him answer.

A. If he only means the economic system to which we now give the name "basing-point system," I think that these economists do deal with it.

Q. And they do say that under the basing-point system of delivered prices there is a market in the economic sense?

A. That raises the same question. Do you mean they use that precise term "basing-point system"?

Q. No.

A. Or not?

Q. I don't hold you to those exact words, Doctor; I would not want to do that. But do they take that position in substance?

A. Yes, they take that position in substance, as I have testified here.

Q. And will you point out the page and paragraph where any of them take that position?

A. I am prepared to. I have numerous quotations here which would substantiate that.

45381 Q. Can you point out where economists say that there is a real market in the economic sense under non-competitive conditions?

A. I do not think I could say that economists all treat that matter in exactly the same way, but I think generally economists define a market so broadly that they can consider both competitive and non-competitive markets.

Q. Do they say that a real market in the economic sense exists under non-competitive conditions?

A. I think I have just answered that, Mr. Wooden.

Q. Why can't you answer it "yes" or "no"?

Trial Examiner Norwood: He said do you know any economists who hold to that effect? You either know it or you do not now it.

The Witness: Well, I just said that I think economists use the term, some of them, "market" in such sense
45382 that it could include both competitive and non-competitive markets.

Trial Examiner Norwood: Well, would that include the conditions that he set forth there?

The Witness: I believe so; markets in which there was not competition.

Trial Examiner Norwood: Then your answer was in the affirmative, that you do know some?

The Witness: There are probably some who do that.

Trial Examiner Norwood: Well, do you know that?

The Witness: I might have to refresh my memory as to the exact wording that these economists use.

Trial Examiner Norwood: As to who they are?

The Witness: Oh, yes, as to who they are.

Trial Examiner Norwood: Do you know who they are?

The Witness: I could not give their names offhand.

By Mr. Wooden:

Q. Do you say that it is the consensus of economic opinion that there is a real market in the economic sense under non-competitive conditions?

A. I have not said that.

Q. I am asking you whether you do say it.

A. I would not want to say that without checking as to the opinions of a great number of economists whose opinions I have not checked with respect to that particular point.

45383 Q. I thought you had been checking it.

A. Not with respect to that particular point.

Q. And you can't now say that?—

A. I have not testified—

Q. —that is the consensus of opinion?

A. I have not testified as to whether the definitions of "market" used by economists are defined in so restricted a sense that they would apply only to conditions of competition or in a broader sense, which would permit of non-competitive markets.

Q. Well, anything that you could submit along that line would not go to the point, so far as you know, of saying that there is a real market in the economic sense under non-competitive conditions?

A. I do not quite understand that question.

45385 A. Well, the fact is, as I think I have already said, that was not one of the points on which I testified on direct examination. It was not one of the points which I particularly investigated in preparation for this

case, and I am not prepared now, without further time, to check all the writings of these economists, to answer.

By Mr. Wooden:

Q. Then your answer is, I take it, that you do not know what the consensus of opinion is on that question that I put to you?

A. On that particular point, I cannot tell you what is the consensus without further checking the writings of these economists.

Mr. Wooden: Your Honor, in view of the witness' last answer, I move to strike his testimony on direct examination regarding the consensus of opinion, which appears on page 44792. The issue there was whether or not there was a market, in the economic sense, under non-competitive conditions, and the witness says he does not know what the opinion is on that subject.

45392 Q. Doctor, referring to your testimony on page 44793, in regard to where the forces of competition converge, in view of your testimony on page 44755 with regard to the importance of the relation between mill nets and total variable costs, do you think that the forces of competition would converge upon the mill net because of the mill net's relation to cost?

45393 A. Well, on page 44755, I take it you refer to my answer defining dumping?

Q. No; I mean what precedes it on that page and what begins at the middle of page 44754 and ends at the middle of page 44755.

A. Oh! In the answer to which you now refer I was discussing the effects of a high overhead cost on a marketing problem of the industry, such as had been described to me, and I find nothing in that answer which in any way conflicts with my testimony on page 44793, to the effect that the forces of competition converge at the market, which is the place where the goods are delivered to the buyer, rather than at the mill where the goods are produced.

Q. You would say that the forces of competition converge neither upon the mill net nor upon the costs?

A. The forces of competition have to do with price. It is the forces of competition which, according to economic principles, tend to determine the price in the market.

Q. And they do not have any relation to the costs?

A. I did not say that. I said they converged upon the market to determine the price.

Q. And the market, in turn, converges upon the ability of the mill to get a mill net which is above its costs, too; does it not?

A. Well, that is a peculiar use of the word "con-
45394 verge," which I cannot employ, myself.

Q. Now, on page 44794, where you testified, on lines 9 to 11, to the effect that making an identical delivered price was a clear case of meeting competition, and a competitive act that represents a state of competition; do you find that?

A. I find it, but you have not correctly paraphrased the question which I answered, I believe, which I think is back on page 44793.

Q. Yes.

A. Saying that Dr. Fetter had testified, in substance, that when the different cement companies meet the lowest price quoted by any competitor at any given destination under a basing-point system of selling, this was not properly described as meeting competition, and was, in fact, no competition at all.

Q. Yes.

A. I testified that I thought it was a clear case of meeting competition, it was a competitive act, and represents a state of competition.

Q. What I wanted to ask you was whether you meant definitely that that was the case, or that it might be the case?

A. I meant that it definitely was the case, on the hypothesis contained in the question which was asked me.

Q. Passing on that same page to your testimony regarding the word "artificial"—"artificial system"—

A. Yes; I find it.

45395 Q. You said you were unable to think of any reasonable definition of the word "artificial." Do I understand that, nevertheless, you agreed with or stated that it was a natural outgrowth, rather than artificial, without being able to define in your own mind what "artificial" was?

A. Well, I said; on any definition of the word "artificial" that was reasonable, it would not be properly characterized as "artificial."

Q. Would it be artificial, in your opinion, if it were collusive?

A. I think a collusive combination or agreement might

under certain definitions of the term "artificial" be called "artificial."

Trial Examiner Norwood: Would it be, according to your definition?

The Witness: I have not in mind a precise definition of "artificial," as that was not required in my answer to this question. Under any definition that I can think of, the situation put before me would not appear to me to be artificial.

By Mr. Wooden:

Q. In other words, you would say it was artificial without having any clear idea of what "artificial" meant; is that right?

A. No; that is not quite right. That is not what I said.

45396 Q. Do you say that, in your opinion, a system might be called "artificial" if collusive?

A. I think it might be called "artificial" if collusive.

Q. Would you say this system is artificial by comparison with the concept of pure or perfect competition?

A. I have already said that I do not think it is artificial under any reasonable definition of the term.

Q. Now, passing to the next page, 44795, will you read the question that was put to you in the testimony of Dr. Fetter that was incorporated in it, to which the answer on line 13 applies?

A. Beginning at the bottom of page 44794?

Q. Yes.

Mr. Bond: Do you mean he should read it into the record?

Trial Examiner Norwood: No; do not read it into the record.

A. Yes; I have read that. I think I find one mistake in the record. I think instead of "higher" the word should be "high."

By Mr. Wooden:

Q. In what line?

A. In my answer, yes—"I should think that that degree of freight-absorbing sales was not an indication of a high price, but rather of a high proportion of overhead costs"—I think I must have said "high" instead of "higher."

45397 Q. In line 17.

A. I have the line numbers in my copy, but that is the place.

Q. Now, Doctor, just forgetting what Dr. Fetter testified as quoted to you there, and directing your attention to the question that was put to Dr. Fetter, will you answer the question that was put to Dr. Fetter?

A. Well, my answer, again, is that that does not indicate to me anything very definite as to the level of the basing-point prices.

Q. Of the average level?

A. Or the average level.

Q. It does not indicate anything; is that right?

A. No; I have not enough here to tell me what comment I should make upon the average level of basing-point prices.

Q. You said you did not know what Dr. Fetter meant by the word "high." Suppose you assume that he meant the base price was high as compared to the low mill nets taken on freight-absorbing sales, would that enable you to answer it any differently or any more fully?

A. That the base price was high compared to the—

Q. Low mill nets taken on freight-absorbing sales.

A. Well, that seems to be only a mathematical question. The question put to him gave precise figures. It shows just what the difference is, and whether that is high or 15,908 not depends upon the point of view from which you are regarding that.

Q. You were not addressing yourself, at any rate, to the comparison between the low mill nets and the base price in the answer that you gave?

A. Well, I think my answer on the record speaks for itself. I said I did not know what he is comparing when he says the price is high, and then went on to say that that degree of freight-absorbing sales was to me not an indication of high price, but high proportion of overhead costs.

Q. Now, passing to page 44796, near the top of the page, you intended to testify there that the identity of delivered prices had no connection with or relation to the basing-point method or system?

A. No; I think the record will show that that was not what I meant to say. What I meant to say was that you might get a system of identical prices under various pricing methods.

Q. In line 9—

A. And, therefore, I did not like, myself, to take any responsibility for the phrase "the basing-point system of identical prices," which seems to imply that identical prices are an inherent part of the basing-point system, or that the basing-point system itself is definite in terms of identical delivered prices.

Q. But you did say, did you not, that prices are going to be identical in any event, and are not dependent
45399 upon the particular method of making them?

A. That is substantially what I said.

Q. Then, do you or do you not mean to say there that the basing-point system has no relation to identical delivered prices in this industry?

A. I think I have already answered that question. I did not mean to say that there was no relation at all between the basing-point system and the prices in the market. What I did say was that I did not like the connection which was implied in the phrase "the basing-point system of identical delivered prices."

Q. Why did not the identity of delivered prices that you referred to there on that page work out that way in 1931 and 1932?

Mr. Bond: That is a factual question, Your Honor.

A. I am not prepared to answer that question.

By Mr. Wooden:

Q. Well, assume that it did not work out that way in 1932, what would be your economic explanation?

A. I would simply say that I have not in my possession now the facts that would permit me to express any opinion on that subject.

Q. Now, referring to page 44797, where you testified concerning the economic law of supply and demand, would you understand by that expression the effects of
45400 supply and demand on price under freely competitive conditions?

A. Under various conditions.

Q. Well, you say that the economic law of supply and demand, even under non-competitive conditions—

A. Parts of the law of supply and demand work under non-competitive conditions.

Q. —work to a lesser degree.

A. I would not quite say that. I would rather stick to my own language, that parts of the law of supply and demand are operating even in a non-competitive market.

Q. The economic law of supply and demand is not working freely in such a market?

A. I do not use the term economic law as not working freely. I do not think that is the proper language of any scientific law. The law works as long as the conditions to which it relates are found.

Trial Examiner Norwood: Well, would it not work imperfectly in some cases and better in other cases?

The Witness: No, Your Honor.

What would you mean by saying that the law of gravitation worked imperfectly? I think that is an analogy. Scientific laws do not work imperfectly. In fact, it is not quite a correct use of language to say that they work at all. A scientific law is a statement of the necessary cause and effect.

45401 Trial Examiner Norwood: You can refer to it as being partially or completely effective.

The Witness: Well, you can refer to the—

Trial Examiner Norwood: If a thing is free to respond to the operation of the law of gravity, it would work perfectly, but if there is something that does not respond to the operation of the law of gravity, you might refer to that as a partial or complete failure of the operation of the law of gravity, might you not?

The Witness: If a person was using language in a very loose and careless way, you might say so.

Trial Examiner Norwood: But I mean in that sense.

The Witness: No; I never use such language.

Trial Examiner Norwood: The law of supply and demand should be completely effective and not hampered in any way, or else it does not work at all; is that what you mean?

The Witness: No; I do not like the words that "the law of supply and demand works."

Trial Examiner Norwood: We have to put it so, so that you can answer these questions.

The Witness: I think I have already answered it. I do not say that the law of supply and demand is partly working. What I think I said originally was that parts of the law of supply and demand are applicable to conditions of a market which is not freely competitive.

45402 By Mr. Wooden:

Q. In other words, even a monopoly may have to concede something to a poor state of demand?

A. A monopoly is not independent of the operation of the laws of demand.

Q. As a matter of fact, the so-called law of supply and demand in fact is not one law, but you might say a group of things taken together?

A. It can be broken down into separate parts, if you wish to. It all comes to the same thing, whether by law of supply and demand you are thinking of everything included there or whether you choose to separate it up, put it in different parts.

Q. It involves the law of relationship, the law of supply and demand in price, doesn't it?

A. That is part of what is involved.

Q. When you testified that in your opinion cooperation was not inherent or not essential in the maintenance of basing-point systems, what industries had you studied that led you to make such a statement?

A. Have you in mind any particular answer, Mr. Wooden?

Q. Yes, I have in mind the answer that you gave on the last morning of your direct testimony just shortly before—it is not on a page here now, you won't find it on a page, and I do not have that short—

Trial Examiner Norwood: Read the question.

45403 (Question read.)

Trial Examiner Norwood: Don't you remember testifying to that effect?

The Witness: I would like to see the exact—

Trial Examiner Norwood: Isn't that the position you are taking right along here?

The Witness: I would like to see the exact language of my answer.

Trial Examiner Norwood: Yes, but can't you answer my question without looking at anything?

The Witness: The point is, what is meant by "cooperation." I want to see the context.

Trial Examiner Norwood: Don't you know what you meant when you used it?

The Witness: I don't even know that I used it yet.

Trial Examiner Norwood: All right. You may proceed.

By Mr. Wooden:

Q. Well, when you were taking issue with Dr. Fetter's testimony on the same point.

You had about 15 minutes on direct that morning.

(The witness is looking at a transcript.)

Trial Examiner Norwood: We will take a five minutes' recess during which time I will ask the witness to look at the record there and see if he can answer the question.

(There was a short recess taken.)

45404 Trial Examiner Norwood: Gentlemen, please come to order.

Proceed.

Read the last question.

(Record read.)

Mr. Bond: May I point out that it comes on page 44808.

Trial Examiner Norwood: Yes.

The Witness: And on referring to the record I take it that that answer related to a question asked me on page 44798.

By Mr. Wooden:

Q. I think that is right.

A. I was asked whether I agreed with certain quotations from Professor Fetter, the particular part in question being that Professor Fetter said, "It is my conclusion as a student of basing-point practice of various industries that it is of the essence of basing-point practice that there is cooperation and tantamount to an agreement." I used he word "cooperation" and "agreement" as I supposed that he meant to use it, and based my answer on my general information about industry in general, and upon the hypothetical statements about the cement industry which have been put before me as an example of a basing-point industry.

Q. And you did not base your answer upon any

45405 studies of special studies of basing-point industries?

A. Well, I base it on all of my knowledge of industries such as I have described in the statement of my qualifications.

Q. But you made no firsthand investigation or study of any basing point industries?

A. I would not say that I had made a firsthand study of a particular industry, which would be called a technical, or technical study. I have made various studies of various industries in connection with my general study of economics.

Trial Examiner Norwood: Did you study the basing-point system in industry?

The Witness: Yes, Your Honor. I have already testified that I think the basing-point represents a very common prevalent application of pricing methods of which I am sufficiently familiar to answer this question.

By Mr. Wooden:

Q. What basing-point industries did you make any firsthand study of?

Mr. Bond: That has been asked and answered.

Mr. Wooden: It has not been answered yet. I know it has been asked.

Mr. Leisure: We have been over it several different times,—the same question.

Trial Examiner Norwood: Answer the question.

The Witness: I have already answered that.

55406 Trial Examiner Norwood: Answer it again.

A. In the sense a firsthand study means technical investigation of some industry, I do not claim to have made such a study.

By Mr. Wooden:

Q. Do you say there is no mutuality of behavior among competitors using the basing-point system?

A. I am still as I was when I answered this question on direct; still uncertain as to what Professor Fetter may have meant by "mutuality of behavior."

Q. Well, I am not concerned with what he meant. I am concerned now with what you mean to say: Do you say—

Trial Examiner Norwood: I do not think you have to study the record to answer that question.

Please put the record over there on the table, both of them.

(The witness does as requested.)

By Mr. Wooden:

Q. Do you say that there is no mutuality of behavior among competitors using the basing-point system?

A. I do not use that word "mutuality of behavior." I only use it in connection with an answer calling my attention to its use by Professor Fetter. I should not, myself, choose those terms.

Q. Well, then, why not say "no" or "yes" to my question.

45407 A. I think my answer is more responsive to your question than would be either "yes" or "no."

Q. In other words, I cannot get an answer as to whether you think there is any mutuality of behavior among competitors using the basing point system?

A. Well, regardless of the meaning of mutuality, that is a factual question and I cannot answer it.

Q. I am asking you as an economic expert whether you see any mutuality of behavior.

A. I still think that is a factual question.

Trial Examiner Norwood: Do you see it or do you not?

The Witness: I am not a factual witness, Your Honor. He has asked me a factual question. I have testified.

Trial Examiner Norwood: Can't you base it on those assumptions?

The Witness: Oh, yes, I have already answered on the basis of the assumptions, that assuming that mutuality of behavior means some sort of collusion or agreement, I do not find that the hypotheses before me lead to the inference that that exists.

By Mr. Wooden:

Q. No, it does not go that far, Doctor. The question is simply, Do you see any mutuality of behavior with-
45408 out regard to whether it amounts to collusion or not?

A. Then I have to ask your definition of "mutuality of behavior."

Trial Examiner Norwood: I think he has answered the question.

By Mr. Wooden:

Q. You approach the close of your direct testimony by a statement regarding free enterprise. Do you think as an economist that if there is a collusive condition in an industry that it is entitled to call itself an industry of free enterprise?

Mr. Bond: Have you the page reference, Mr. Wooden?

Mr. Wooden: No. It is on that last morning. I do not see any necessity for him to refer to the record in order for him to answer that question.

Mr. Bond: I am not asking him to. I would like to see for myself.

Trial Examiner Norwood: Answer the question.
Mr. Wooden: If he has—
Mr. Bond: I want to see for myself.
Trial Examiner Norwood: Read the question.
(Question read.)
Mr. Bond: If Your Honor please—
Trial Examiner Norwood: Can't you answer that question?
45409 Mr. Bond: I will enter an objection as misquoting the witness.
The Witness: It refers to an answer I made, Your Honor. I would like to see what the statement was.
Trial Examiner Norwood: I think the question can be asked without the assumption.

By Mr. Wooden:

Q. Just regardless of what you may have said or may not have said, do you think that assuming that an industry is one in which collusive conditions exist, that it is entitled to be called an industry of free enterprise?

A. Well, I think I use the term "free enterprise" as meaning enterprise in the hands of private owners of capital, and under the direction of entrepreneurs as distinguished from Government industry or industry very greatly restricted by Government regulation, and even though there were present some factors of collusion I think that would still correspond to my notion of free enterprise as I would use it in this connection.

Q. You really meant private enterprise rather than free?

A. Not quite. I think I meant free enterprise as I stated I now define it.

Q. Well, you testified, did you not, that the basing-point system in this industry was not contrary to the public interest but was definitely favorable to it?

A. I would like to see my answer to that ques-
45410 tion to which you refer.

Trial Examiner Norwood: You do not recall what you answered with respect to that?

The Witness: Why, Your Honor, these questions are so frequently asked to me in terms different from what I used, and then the possibility that the very precise language will be made a matter of importance that I should like to see the exact language I used before accepting a statement that I testified so and so.

Trial Examiner Norwood: Well, I think you should answer the question without reference to the record, if you can.

The Witness: Well, I cannot tell without reference to the record whether I used the precise—

Trial Examiner Norwood: If you refer to the record to answer every question it would defeat part of the purpose of cross-examination.

Mr. Brick: I do not think it does, if Your Honor please.

Trial Examiner Norwood: I think so.

Mr. Brick: When the question itself purports to include a statement made by the witness [illegible]

Trial Examiner Norwood: You are correct there.

Mr. Brick: It may be an accurate statement; it
45411 may be an inaccurate statement, or it may be a paraphrase of the statement.

Trial Examiner Norwood: Counsel is correct in stating some circumstances where he should have the record.

Mr. Wooden: Nevertheless, I have been more than liberal in my referring him to his testimony when I did not need to.

Trial Examiner Norwood: Well, read the question.

(Question read as follows:

"Q. Well, you testified, did you not, that the basing-point system in this industry was not contrary to the public interest but was definitely favorable to it?")

By Mr. Wooden:

Q. I put that as a question, whether you did not.

A. I testified, as I recall, that the public interest was best served by free enterprise and the state of competition, and that so far as the hypothetical conditions laid before me went I found no reason to infer that the basing-point system was not consistent with free competition, and, therefore, no reason to think it was not consistent with the public interest.

Q. In other words, your testimony in that respect depended on the assumption that the system was not collusive?

A. Not on that assumption. It depended on the assumptions which were laid before me in hypothetical questions in which I inferred that there was no rea-
45412 son to assume that competition was not present.

Q. Do you mean to say, Doctor, that you would

testify that a given method of marketing was favorable to the public interest and not contrary to the public interest without assuming that it was competitive?

A. I think I have already testified in answer to that question that under the system of free enterprise there may be conditions in which combination is inevitable, and under those conditions I would not say that to recognize the necessary combination was against the common interest, the public interest.

Q. So your testimony here is to be taken, is it, that the method of marketing employed in this industry is in the public interest regardless of whether it may be collusive or not?

A. That was not what I said, no.

Q. Well, what is your answer to that question?

A. I have to go back and repeat what I have already answered.

Q. Why do you? It is plain.

Trial Examiner Norwood: Wait a minute.

A. Because—

Trial Examiner Norwood: Wait a minute.

Read that question.

(Question read.)

Mr. Leisure: If Your Honor please—

Trial Examiner Norwood: Now, he wants an in-
45413 terpretation of your previous testimony. He does not want any repetition of it.

Can you answer that question without referring to your previous answer?

Mr. Leisure: If Your Honor pleases, I want to object to that question on two grounds, the first being that it has, as the record will show, that it has been answered at least five times in the record; the second being that it calls for, as it is phrased here, calls for general testimony covering his entire testimony, which I think is an improper question.

Trial Examiner Norwood: The objection is overruled. Answer the question.

A. All I can say is, that under certain conditions a monopoly situation might be in the public interest, as I have already said, and I cannot answer that in those broad general terms without knowing what particular conditions are in mind as regards particular industries.

By Mr. Wooden:

Q. Well, we are talking about this particular industry.

Mr. Leisure: Then it is factual, and I object to it on that ground.

Trial Examiner Norwood: He has answered it.

The objection is sustained.

By Mr. Wooden:

45414 Q. Doctor, do you agree that when purchases are inelastic that a monopolistic price may be put very high without diminishing sales enough to neutralize the large gains per unit?

A. I take it by "purchases" being inelastic, you mean a condition of inelastic demand?

Q. Well, use the term "purchases."

A. Well, I do not, myself, use that term, or see that it has any precise meaning unless it means inelasticity of demand. Now, I use the term "inelasticity of purchase", not of "purchases."

Q. Well, all right.

A. As being synonymous with inelasticity of demand. I assume you meant the same thing?

Q. Well, that is it.

A. Yes.

Why, a monopoly is in a more favorable position if the demand for its product is inelastic than if it is elastic. I think that is responsive to your question.

Q. And that it may put the price very high without diminishing sales enough to neutralize the large gains per unit?

A. It may put the price higher than it could put it if demand were more elastic.

Q. And without neutralizing the large gain per unit?

A. Well, there, again, it is a matter of comparison. There is less neutralizing if the demand is inelastic

45415 than if it is elastic.

Q. What I am referring to here, Doctor, is your writing on page 348 of your Volume I of Elementary Economics textbook. Didn't you say there that when purchase is inelastic the price may be put very high without diminishing sales enough to neutralize the large gain per unit?

A. Yes, I said on the other hand when purchase is inelastic (shown by a steep curve) the price may be put

very high without diminishing sales enough to neutralize the large gain per unit.

That is a correct statement in connection with the context in which it occurs.

Q. Wouldn't you also agree that a wise monopoly does not raise the price unduly because of fear of Government interference?

A. There are many circumstances which a wise monopoly will have in mind when it considers its price policy and the possibility of Government interference is one.

Q. Haven't you so written?

A. I have in substance, yes.

Q. Now, Doctor, I have requested you at various times in the course of the cross-examination to give citations to the pages, paragraphs, and lines of economic authorities whom you say have written to the effect, or in opposition to the effect posed in certain questions of mine that
45416 I put to you. What have you been able to do on that?

A. As I understand, Mr. Wooden, on Friday afternoon you put to me that request with respect to my testimony as to the presence of identical prices in a competitive market which I defined somewhat more specifically, and—

Q. Now, Doctor—

Trial Examiner Norwood: Let him finish.

A. —between Friday and when I returned to Washington Monday night I did check these books, and with respect to that one question—

Q. Now—

Mr. Bond: Let him finish.

A. —and have here the page numbers of more than half of those books and also extended quotations taken from those books which support my testimony at that point.

I realize that today you have asked me to produce the same with respect to certain other questions. Of course, I have had no opportunity to make further check on those other points.

By Mr. Wooden:

Q. As I understand it, what you have here are citations to the writings of economists which say that in a competitive market the price tends to become uniform?

A. Tends to be uniform.

Q. Tends to be uniform; and you mean by that, I
45417 take it, prices actually paid as distinguished from price quotations?

A. Those economists will generally have in mind the prices paid in the market at a given time for a particular commodity.

Q. And is that all that these citations you have go to,—that particular point?

A. Oh, no. When I take a citation that goes to that point it very likely covers other points which might be raised.

Q. Well, I mean other points that were included in what I asked you?

A. I do not quite get that.

Trial Examiner Norwood: Those citations contain all that you relied on to support your testimony with respect to the 51 economists?

The Witness: Well, as to that, Your Honor, I should make a word of explanation. In almost every place where I testified as to the opinion of economists, I said that not more than two or three or four, as the case might be, did I find any agreement with the certain statements of the Commission's expert witnesses. In only a couple of cases, as I recall, did I then say that the other 88, or whatever it was, agreed with the other interpretation, or the other view.

Now, I should have added whenever I said that barring certain of these authors, whose books, as I have examined them, did not deal with this particular question. My
45418 list is the same list which I had used in preparation for this case and in study of the Old Cement case with respect to a good many different questions, and in trying to find out whether economists agreed or did not agree with certain statements of the Commission's experts I checked a good many books, some of which turned out not to have discussed that particular point and yet I have left those books in the list.

That proviso should be understood with respect to my statement that 88 or 99, or some other number, took an opposite view. That proviso, of course, implies no qualification whatever to the statement that only two or three or four agreed with the expert of the Commission.

By Mr. Wooden:

Q. Now, Doctor, is it your testimony that these economists writing on the point to which you address yourself, namely, that the price in a competitive market tends to be uniform in actual sales, do you say or contend that Dr. Fetter says anything different in his testimony?

A. I went over all of that yesterday, I believe. Dr. Fetter is one of those economists who says that the price is uniform in the market, but, then, he gives a definition of price which says that price in the market is not what the buyer pays for the product but what he pays minus something that he pays for freight.

45419 Q. You are referring to his testimony now rather than his text in that latter?

A. Oh, yes, yes. I have here some quotations from Fetter, himself.

Q. Do these citations that you have do any more than expound the theory that the price in a competitive market tends to be uniform?

Mr. Leisure: Just a minute.

Now, if Your Honor please, I think we have gone far enough on cross-examination as to what these citations show, and they are not in evidence. Here they are, and I submit that when the witness reads them into the record they will speak for themselves, and we can save all this time on cross-examination.

Mr. Wooden has asked him to produce them.

Trial Examiner Norwood: It is not in the Respondents' mouth to raise the best evidence rule on this.

Mr. Leisure: Well, I object to Mr. Wooden cross-examing on something that is not in the record, and he has extended the cross-examination now far beyond its proper limits.

Trial Examiner Norwood: The objection is overruled. The hearsay evidence is in, and put in by the Respondents.

Mr. Brick: Well, if Your Honor please, it is not
45420 a question of the best evidence rule. The point is that Mr. Wooden is now interrogating the witness with regard to an unknown factor, being names and extracts appearing on certain papers, and now Mr. Wooden—Mr. Leisure's point has nothing at all to do with the best evidence rule. It merely is that Mr. Wooden should not be permitted to pursue his inquiry relating to an unknown

Trial Examiner Norwood: The objection is overruled. Go ahead.

Mr. Wooden: Your Honor, I would ask that the papers which the witness has produced in this particular connection be marked for identification as Respondents' exhibits and Commission's Counsel be allowed to examine them and determine whether or not cross-examination on the contents of those papers is or is not desired.

Mr. Leisure: Well, Mr. Wooden, if naive, is certainly frank. I will give him full credit for that.

Here the papers are. We ask that they be read in evidence, that the witness be allowed to read them as Mr. Wooden has asked him to do, or that the matter be dropped, one or the other.

Trial Examiner Norwood: Well, if they are not presented for identification, marked for identification, and the Commission's Counsel given a copy I shall allow his motion to strike this testimony, but if they are I-
45421 shall not make the decision that this witness is to be recalled for cross-examination because the papers will be in to show whether they agree with what the witness has said or not.

So I think it would be—I do not think the claim for further cross-examination is substantial. I do not think it is necessary, but I do think that the Commission—that the Respondents should, as they did in the case of this other list here, present those, have those marked for identification and give the Commission a copy, and, so far as I am concerned that will settle the matter.

45427 By Mr. Wooden:

Q. Dr. Fairchild, what has been the nature and amount of compensation that you have received from Respondents in connection with this case?

A. Well, I would regard that as a personal matter. I have no wish to keep from the hearing any informa-
45428 tion that would have a substantial bearing on the decision of the issues in this hearing.

Mr. Bond. If Your Honor please, I will add my objection, and remind Your Honor that with other witnesses you ruled that that was personal, and that they need not answer.

Trial Examiner Norwood: What was the question there?

(Question read.)

Trial Examiner Norwood: I do not think Counsel is accurate as to my ruling there.

Mr. Bond: We have no objection to the nature of the compensation, but if the witness—we have no objection as to the amount, but if the—

Trial Examiner Norwood: Counsel may advise the witness not to answer if he wishes to. I am going to instruct the witness to answer the question, and he may refuse by advice of counsel if he wants to.

Answer the question.

A. Well, I am perfectly willing to say that when I was approached with the offer of an employment on this case I was asked by the Respondents' attorneys what fee I would charge. In reply I quoted to them the same rate of pay per diem which I have been charging for a good many years back for expert work of this sort. The attorneys replied that that would be satisfactory to
45429 them, and the matter was thus determined. As to the precise rate of per diem pay I regard that as a personal matter not bearing upon the issues in this case, and I would like to be excused from giving that information.

By Mr. Wooden:

Q. Have you received any information to the effect that you would have any other compensation than that in the form of a daily fee for the time expended?

A. Nothing else except reimbursement of expenses.

Q. Have you been receiving some compensation ever since you were first approached regarding testifying in this case?

A. I received compensation for a small amount of time which I devoted to the study of this case before I was retained, and since then I have received a very small amount of compensation for the work which does not come anywhere near the amount of work which I have thus far devoted to the case.

Q. Well, when you say "small" are you unwilling to tell us in terms of dollars and cents?

A. Yes. I did not mean to imply small, anything as to the per diem rate; I meant that I have been paid only for a small number of days.

Q. Do you have any understanding as to any future compensation?

A. Only as I give future services to the attorneys in this case and still on the at the same per diem rate.

45430 Q. You have no understanding as to future compensation regarding services already rendered?

A. Well, if I understand that question, no. My compensation, when I am there working at this case, will be determined by multiplying the per diem rate by the number of days I worked.

Q. And the per diem rate multiplied by the days you worked is the only form of compensation you have received or expect to receive?

A. Yes. It is in addition to reimbursement of expenses, of course.

Q. Yes, and you are unwilling to state what the per diem rate is?

A. I prefer not to, yes.

Q. Well, I am asking you, Doctor, as to a matter of what I consider to be a relevant and competent question as a matter of law, that regardless of your preference that you tell us what the rate is.

A. I am not an expert in the law, but I understand it is within my legal rights to refuse to give that information.

Q. And you do refuse?

A. I do.

Q. And as to the number of days you worked?

A. I have already testified from a rough recollection as to the number of days I worked.

Q. Thirty or forty?

45431 A. Thirty to forty, that means the equivalent of thirty or forty full days of work. Of course, the work was performed on a great many more than that number of days.

Q. Well, in the services that you rendered in the Old Cement Manufacturers Protective Association case, some of the parties there are also parties in the present case; were they?

A. I was not aware of it, as a matter of fact.

Q. Did you receive compensation in that case direct from members of the industry, or only through Dr. Adams?

Mr. Bond: I object. What compensation this witness got from some other clients in 1925, in another case of litigation?

Mr. MacIntyre: Not some other clients, if Your Honor please. It is the same clients and parties.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: On what case was that?

Mr. Bond: The Old Cement case.

Mr. MacIntyre: The Old Cement case, involving some of the Respondents.

In other words, he has an interest with some Respondents going back over a number of years, and we have a right to inquire into that.

Trial Examiner Norwood: The objection is sustained.

By Mr. Wooden:

45432 Q. What was the nature and amount of compensation you received in your services, for your services, in the Old Cement Manufacturers Protective Association case?

Mr. Bond: Your Honor just excluded a question on that line.

Trial Examiner Norwood: Yes.

The objection is sustained.

Mr. Wooden: Now, Your Honor, I am back to the point we were a few minutes ago, and would like to renew my request that the papers which the witness produced containing extracts from the writings of economists be marked as Respondents' exhibits, for identification.

Mr. Leisure: Well, we decline Mr. Wooden's offer of having exhibits marked for our benefit.

Trial Examiner Norwood: Well, unless the Respondents offer those and have those marked as the list they did previously I am going to allow the motion to strike this hearsay testimony, 91 economists that agree with this man and disagree with somebody else.

45433 Mr. Leisure: Well, we decline the offer on the part of both the Examiner and Counsel for the Commission to offer evidence in this form.

Trial Examiner Norwood: Well, I did not offer. I am merely telling you the conditions under which I will let this stay in the record.

Mr. Leisure: As I understood it, Your Honor said unless we acceded to Mr. Wooden's demand and marked an exhibit for identification which he wanted marked you would strike that testimony. I say, we are declining both of those suggestions.

Trial Examiner Norwood: I did not make any reference

to anybody's demand. It is my procedure without anybody demanding, but just in the interest of fairness here, if you are not willing to put in these exact quotations here, why, I think that this hearsay testimony, in the interest of fairness, should be struck.

45435 *Redirect Examination by Mr. Bond.*

45438 Q. On page 44835, you were in the process of indicating different assumptions in my long hypothetical question, which were consistent with collusion or monopoly, and you said that the ownership of 150 or more mills by fifty separate, independent companies was inconsistent with monopoly, and then added:

"I should think that would probably be one mill."

Is that what you intended to say?

A. No. By "one mill" I was thinking of one producer or one seller. Of course, I recognize that one producer may own several mills.

45439 Q. On page 44911, Mr. Wooden asked you about the concept of perfect competition, and asked you whether, under those conditions, a seller would accept different prices from different customers at the same time. Let me ask you: Is it possible, in your opinion, to have either pure or perfect competition in the cement industry?

A. I do not think so.

Q. And what are your reasons?

A. The basic reason is that, according to the hypotheses laid before me, the number of sellers in this industry
45440 is relatively small and his share in the total output of the industry furnished by each seller is relatively large, and, as a consequence, the action of any one competitor may have a material effect upon the price. That corresponds with the definition of "imperfect competition."

45441 Q. Showing you your testimony on page 44916, I will ask you whether, in the answer you gave on that page, you were still assuming that Mr. Wooden was always referring to sales in the same market when he continued to ask you about these assumed sales to different buyers at different prices at the same time?

A. Yes, sir. All through my answers on this page I was carrying over the assumption of a particular market.

Q. Looking particularly at your testimony on line 23,

still with reference to the giving of different prices to different customers, you agreed that you would con-
45442 sider it an abnormal thing. You were still referring to sales in one market, or were you including sales at different prices in different markets?

A. I was still referring to sales in one market, and I think I had also eliminated the price-cutting sales, which would be perfectly normal.

Q. Calling your attention to Mr. Wooden's question at the bottom of page 44917, where he asked you to assume that not only one seller is accepting different prices from his different customers at the same time, but a group of sellers is each doing that, and he asked you whether you would consider that a rather abnormal and queer situation, and on page 44918, line 2, your answer starts: "I would consider that a strange situation."

Let me ask you: Were you still answering these questions, including this one, on Mr. Wooden's original assumption that these sales were all in the same market?

A. Yes; I was still answering on that assumption.

Q. And also that these were all sales made on openly quoted prices?

A. Yes; I thought the matter of the secret price cuts had all been disposed of.

Q. Would you consider it a strange situation if these different prices were made in different markets; that is, at different destinations?

45443 A. Oh, certainly not.

Q. Turning to page 44920, Mr. Wooden asked you if the economic theory of the relation between price demand and supply was not based on the principle that sellers will make the same price to their various customers at the same time, and your answer begins, "Yes; it is."

Let me ask you to what extent and under what conditions, Doctor, would that be true?

A. Well, that is on the assumption that we are dealing with one market, and it does not preclude the possibility of some off price sales or of some sales as a result of secret price cutting.

45444 Q. Professor, when we adjourned I was asking you about your last answer on page 44920. Let me ask you one further question with respect to that. Does the statement to which you assented in your answer re-

quire any assumption as to these sales being in the same market?

A. Yes; that question requires the assumption that these sales are in the same market.

Q. Professor, on page 44923, in lines 9 and 10, you said:

"We might still have competition in general with some collusive activities also present."

And again, at the top of page 44924, you said:

"Given that situation of imperfect competition, there might be some limited acts of collusion going on between competitors."

45445 Can you give us some illustrations which will make more clear why you feel that, under certain circumstances, you can still have competition when you have certain elements of collusion?

Mr. Wooden: Your Honor, I object.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. I had in mind certain forms of unimportant collusion, such as agreements as to hours of labor or conditions of labor or wages, or things of that sort, which would still not have a material effect upon the competitive condition in the industry, or agreements between a certain few competitors which would not change the general situation of the industry, which would still be competitive.

45446 Q. Well, does free competition fall somewhere between perfect competition and perfect monopoly, or is it something that may be found under any form of competition, whether pure, perfect, or imperfect?

A. Free competition means a condition of absence of collusion, and that may be found under any type of competition, perfect, pure, or imperfect. "Free competition" is a characterization of the nature of competition, not a classification.

45448 Q. Doctor, assume that the dealers knew that the mill nets varied on sales to different points, and that at some of the points to which sales were made delivered prices were quoted which resulted in a lower mill net, and that the delivered prices quoted at these points were quoted to equal the lowest delivered price being

quoted by any competitor at those points. Do you think that under such circumstances the dealers paying a delivered price which gave the mill its higher mill net would complain?

A. I do not think they would complain.

45449 Q. On pages 45033-34 Mr. Wooden questioned you about a destination with only one buyer and several sellers, and as to whether that constituted a market.

Let me ask you whether or not you would expect the prices quoted by the different sellers of this homogeneous article, under those conditions and under the general conditions in our long hypothetical question, to be identical, irrespective of the technical question of whether a market could be said to exist at that point?

A. Yes; I would expect those prices to be identical under those conditions, regardless of the question of the definition of "market."

45450 Q. Would your answer have been the same, Professor, if I had omitted reference to the long hypothetical question?

A. Yes; it would.

Q. Let me ask you whether, as an economist, you consider that there is no competition in the market unless the buyers are in a position to effectually bargain or higgle over price?

A. No; I do not regard the opportunity to bargain or higgle over price as being a requirement of the—I do not get your last word there?

Q. To have competition?

A. Oh, yes. —as a requirement of the condition of competition.

45451 Q. Now, Mr. Wooden questioned you as to your description of the indicia of competition and the importance of these items which you listed.

Let me ask you, which do you, as an economist consider the more significant, the ratio of net profit to sales or the ratio of net profit to actual investment?

Mr. Wooden: Just a moment.

Now, Your Honor, this is the specific point where I stopped my cross-examination yesterday on Your Honor's statement as to your attitude toward this line of testimony, and I can only say that if they are permitted on redirect to pursue this then I want to pursue the same subject on recross.

Mr. Wooden: Now, I object, not merely reserve the right of recross on the subject, but I object to the question.

Trial Examiner Norwood: On what ground?

Mr. Wooden: One the ground it is irrelevant and immaterial to the question of whether or not there is collusion in the industry.

45452 Trial Examiner Norwood: There is no use going into that.

I shall sustain the objection and give you your exception.

Mr. Bond: Well, I offer to prove, then, by this witness that in his opinion as an expert economist he would in considering the indicia, so-called, of competition regard the ratio of net profit to actual investment as the significant factor for consideration rather than the ratio of profit to sales.

45453 Q. Now, do you recall Mr. Wooden's question as to the definition of a market in which you replied with a reference to the definition formulated by the Committee on Economic Accord?

A. Yes.

Q. How representative is this committee?

A. It is composed of a very large number of economists, 140, more or less, I am told, and is, I should think, in high degree representative of the consensus of opinion of the economists of the United States.

I should add that reports of this committee do not require unanimous vote by the members of the committee, but that they are submitted to the members of the committee and each one is asked to criticize or object if he sees fit.

Q. Now, when you stated in answer to a question by Mr. Wooden that one producer could set the price only if he had a monopoly, what did you mean by the phrase "set the price"?

A. Well, in that connection, by that phrase I meant actually to determine or influence the price. I was
45454 not using that phrase to refer to the offer of a price or the quotation of a price by a seller as under the basing-point system: also I may add that I had in mind in connection with that question and my answer a homogeneous commodity, so that I was not considering the case of what is sometimes called an administered price;

for instance, Henry Ford may be said to fix the price of his car, but he—that is because in that industry of certain class of low-priced automobiles there is product differentiation. What I was thinking of was the power to actually fix a price without regard to possible action of competitors, which power alone is possessed by monopoly.

Q. Mr. Wooden also asked you if you could give any reason for the fact that quantity discounts are not given in the cement industry. I will ask you to assume that over a long period of years no producer of cement have given quantity discounts on large cement orders. Would or would not that be an adequate explanation for the fact that thereafter such quantity discounts have not been given in recent years?

45455 Mr. MacIntyre: Just a moment.

That is objectionable. A leading question.

Trial Examiner Norwood: The objection is sustained.

Mr. Bond: May I ask Your Honor on what ground, if Your Honor please?

Trial Examiner Norwood: You are just asking him for a factual conclusion there.

Mr. Bond: Mr. Wooden asked the same question.

Trial Examiner Norwood: Well, you point it out and I will strike it.

Mr. Wooden: I did not ask the same question.

Mr. Bond: Well, I will find it if Your Honor will give me a moment.

Trial Examiner Norwood: No, let us not stop now.

Mr. Bond: I am nearly through. I would like to find the page, Your Honor.

Trial Examiner Norwood: Yes. All right. It can be struck any time if it is exactly similar to that, asking for a factual inference there.

Mr. Bond: Doesn't Your Honor recall the questioning about quantity discounts, and why they were not given?

Trial Examiner Norwood. Oh, yes. We went into that fairly.

Mr. Bond: You see, I am going into the same question, that is all.

45456 Mr. Wooden: The question is highly leading, for another objection.

Trial Examiner Norwood: I do not think you can add anything to it.

Counsel has his exception.

By Mr. Bond:

45458 Q. Professor, on page 45085, Mr. Wooden asked you:

"Now, tell us what economic writers say that prices tend to be identical at each destination under competitive conditions, and where did they say it?"

And you answered:

"Well, I think practically all economists have said the substance of that, not in those precise words."

And then the question by Mr. Wooden is:

"Can you tell us who said the substance of that in my question and where they said it?"

I now ask you, Professor, are you prepared to state who these economists are that support this consensus of opinion to which you have referred, on that subject?

A. Yes; I am.

Q. Now, I will ask you, Professor, to tell us who these economists were, what they said, and where the
45459 quotation will be found, and refresh your recollection from any papers that you desire.

Mr. Wooden: I want the witness to note that this question calls for a statement of where these economists said—what was the question there—delivered prices?

Mr. Bond: No.

Mr. Wooden: Well, the—

Trial Examiner Norwood: The witness is asked to repeat the language to which he was referring and to tell who said it.

Mr. Bond: I quoted Mr. Wooden's question.

Mr. Wooden: No; he is not asked to repeat the language, but he is asked to state who they were.

Mr. Bond: And what they said and where they said it. That was my question.

Mr. Wooden: Read the question.

Trial Examiner Norwood: Is the Respondent going to have that paper marked in the way that I suggested and let the Counsel for the other side see it?

Mr. Bond: I prefer to put it in through the witness orally, in the same question that Mr. Wooden asked him.

Mr. MacIntyre: It is not the same question.

Mr. Bond: I read that from the book.

Mr. MacIntyre: It is not the same question.

Mr. Bond: And gave him the citation.

45466 Trial Examiner Norwood: The objection is sustained.

45467 By Mr. Bond:

Q. On page 45112, in line 14—

*Redirect Examination by Mr. Bond.*

Q. I will ask you if your testimony is correctly reported there?

A. Where?

(Mr. Bond indicated in a transcript.)

A. No; there is one word which is wrong. The word "price" should be "freight," making the sentence read: "I say it would be a ridiculous statement that freight was not included in the delivered price at the place of delivery."

45468 Trial Examiner Norwood: Well, now, these books
45469 from which there was some hearsay testimony, which is the subject of a pending motion to strike—

Mr. Bond: That is different, if Your Honor please.

Trial Examiner Norwood: —may be produced or you may promise to produce them now or you may decline to produce them now.

45470 Trial Examiner Norwood: Now, please just answer my question, were those excerpts there marked for identification, or does the Respondents decline to mark them?

Mr. Leisure: We have not been called upon to mark them. The state of the record is that Mr. Wooden wanted to mark them, have them marked as Respondents' exhibits.

Trial Examiner Norwood: That is right.

Mr. Leisure: And we objected to his marking exhibits for us. That is the state of the record.

Trial Examiner Norwood: You do decline to produce this, do you?

Mr. Brick: The only thing we decline to do, Judge, if I may be permitted to mention it, is to follow a method which has been dictated by Mr. Wooden. In other words, we think that we have the right to follow the usual course of asking a witness questions on redirect which we think are important. Your Honor sustained an objection
45471 to a question which would bring out this material, place it on the record, which Mr. Wooden avoided. Now, we do not see that it is necessary for us to make any

exception merely to abide by a request which apparently is for Mr. Wooden's benefit.

Trial Examiner Norwood: Now, the conditions that I made were not the conditions that Mr. Wooden insisted on. In fact, I denied his request for an understanding about recalling this witness on cross-examination, and I made one little condition there in the interest of fairness, if this is going in here, those conditions will have to be complied with; if you have those marked Respondents' exhibits the same as you did the other list a few days ago, and make a copy of it available to the Counsel on the other side, I think you would have complied with any consideration of fairness that was necessary.

Mr. Leisure: Well, Your Honor has mentioned "fairness" three times in that statement. Now, on the question of fairness I do not see how there is any more fairness along the line of procedure suggested by Mr. Wooden which, as I understand it, Your Honor is adopting, than there is in the procedure which we propose.

Trial Examiner Norwood: Now, wait a minute, just right there. I just explained to you that I did not adopt it.

45472 Mr. Leisure: You are asking us to mark—let me explain it, then—adopt it to the extent of asking us to mark an exhibit for identification; is that a fair statement?

Trial Examiner Norwood: That is all right. Go ahead.

Mr. Leisure: I do not see that that is any more fair to the Commission's side of the case than the procedure which we have attempted to follow, namely, have the witness read this entire exhibit into the record so that tomorrow morning they have a copy of the record. I do not see that the question of fairness there is involved.

Trial Examiner Norwood: You are just putting more hearsay evidence into the record.

Mr. Leisure: We did not ask the question. He asked the question.

Trial Examiner Norwood: I understand. I think the most satisfactory way, and the way that will be most satisfactory to me, is to allow the motion, and the motion is hereby allowed.

I am willing for this witness' statement to stand that it is the consensus of opinion among economists that so and so is the case, but any special testimony as to what

ten or fifteen or ninety or eighty economists have held, and he has found under his investigation all of that 45473 will be stricken on this motion.

Mr. Leisure: Well, I may merely point out—

Trial Examiner Norwood: Now, we can make that more specific tomorrow, but that is, I think, the most satisfactory, it is to me.

Mr. Leisure: I merely point out that we are prepared to have the witness testify in detail as to who those economists are, and Mr. Wooden has objected, and Your Honor has sustained the objection.

Trial Examiner Norwood: Well, I think it should be struck, anyway.

Mr. Leisure: That is all, Dr. Fairchild.

Is the witness discharged?

Mr. Bond: May the witness be discharged, Your Honor?

Trial Examiner Norwood: The witness is discharged, yes.

(Witness excused.)

45474 PROFESSOR RAY BERT WESTERFIELD was thereupon called as a witness for the Respondents, and, having been first duly sworn, testified as follows:

I am a professor at Yale University in the field of Business Economics.

I received my B. A. degree from Ohio Northern University and my Master's and Doctor's degrees from Yale University. The Ohio Northern University conferred on me an honorary D.Sc. degree in 1934.

I was a graduate student at Yale from 1910 to 1913 and have been on the faculty since that time. I was an 45475 instructor from 1913 to 1916 and assistant professor from 1916 to 1932 and then a full professor.

Until about 1927-'28 I taught elementary economics and from 1915 to date I have taught a course in marketing. From about 1917 to date I have taught a course in commercial and investment banking and monetary theories. Since about 1929 I have taught a graduate course in central banking, and for a number of years, 1916 to 1925, I gave the course on business economics.

In addition to my teaching at Yale, I have taught at other universities during their summer semesters. These

include the University of California at Berkeley in 1925. At the University of California I gave two courses. One was industrial management and marketing and the other banking. In 1930 I taught at Northwestern University, where I gave courses in commercial banking and in monetary theory. In 1931 I taught at Ohio State University, giving courses on the history of marketing and on the Federal Reserve System. In 1932 I taught at the University of Southern California, giving a course in the history of marketing and another course in the history of banking. In 1935 I again taught at the Northwestern University, giving courses in commercial banking and monetary reform. In 1937 I taught at the University of Texas, giving a course in central banking and another course in bank management and administration. In 1939 I taught 45476 at Columbia University, giving courses in monetary theory and international finance.

During the school year 1927-'28 I was the George Westinghouse professor in the Italian Universities, lecturing at the Universities of Rome, Naples, Florence, Milan and Turin. These 63 lectures were on American finance and marketing.

From time to time, as part of my work in the field of economics, I have published various material. My Doctor's thesis was on the "Origin of The Middleman in English Business," and covered the period particularly from 1660 to 1760, although there was some preliminary material going back to the beginning of the medieval development. It was published in 1915 in the Connecticut Academy of Arts and Sciences. In 1921 I published a small book called "Early American Auctions." This was also published in the Connecticut Academy. In the same year, I published a five-volume book on "Banking Principles and Practices." That book went through a college edition in 1924 in one volume, with new editions in 1928 and 1930.

In 1928 I published with Professor Chapman a book on "Problems in Money, Credit and Banking."

In 1929 I published a two-volume book in collaboration with Irving Caplan for the National Industrial Conference Board on the "Incidents and Effects of the Corporate Income Tax." This was an elaborate statistical study of this problem.

In 1932 I was one of the joint-authors of the five-volume work entitled "American Business Practices."

45477 In 1936 I published a book entitled "Silver Debacle."

In 1938 I also published a book entitled "Money, Credit and Banking."

In 1938-39, in conjunction with other economists, I published a book entitled "Consumer Credit and its Uses." This was published by the Consumer Credit Institute.

In addition to the books listed above, I have written and published a number of articles and pamphlets. For example, in 1939 I published one on "Historical Survey of Branch Banking"; another on "Policies and Practices of the Savings and Loan Bank of the State of New York"; one on "Commercial Banker Attitudes Toward Federal Savings and Loan Associations"; one on "Analysis of the FHLB Lending Policies"; and one on "The Twilight of the Federal Reserve System."

I am a member of the American Economic Association, the American Marketing Association, the American Statistical Association, and the Econometric Society. I have from time to time in the past been a member of other economic societies, such as the Royal Economic Society.

By Mr. Withrow:

Q. Have your studies of marketing, Professor, included the so-called basing-point methods of pricing?

A. Yes, they have.

Q. And did you do any work on the Old Cement case?

45478 A. Yes, I was engaged on the Old Cement case with Professor Adams, Professor Fisher, and others.

Q. And have you had occasion to examine and familiarize yourself with such material as has been written on the subject of basing points?

A. Yes, I have read a great deal of it.

Mr. Withrow: Your Honor, I tender Professor Westerfield as a qualified expert in the field of economics.

Trial Examiner Norwood: Well, he is accepted as an expert in the general field of economics.

Mr. Withrow: And marketing.

Trial Examiner Norwood: And marketing, yes.

Mr. Wooden: But not in the other field?

Trial Examiner Norwood: Well, I cannot say just how far.

45479 Mr. Withrow: Of course, Your Honor, our understanding is that that includes—

Trial Examiner Norwood: The basing-point system is included in the general field of economics.

By Mr. Withrow:

Q. Now, in the testimony of Dr. Fetter a hypothetical question was propounded to him, which appears on record page 17638 and 17639, as follows:

"Assume that there is a general practice in the cement industry of mills quoting and selling only at delivered prices and of refusing to quote and sell f.o.b. mill.

"Assume that some mills and some groups or clusters of mills are basing points and that some other mills are non-basing points.

"Assume that delivered prices are the equivalent of base-point prices plus rail freight from base point to destination and that the lowest combination of base price plus rail freight determines which base-point price will govern at any particular destination.

"Assume that when delivered prices are made as described the delivered prices of all mills become identical at the same destination and that non-base-point mills match the delivered prices at particular destinations of the base-point mills.

"Assume that rail freight is ordinarily paid by
45480 the buyer to the railroad company; is then deducted from the face of the invoice and the balance paid to the seller.

"Assume that the mill nets of each non-base point mill vary between its respective customers depending on the differences in freight to their respective destinations, higher mill nets being received from its nearby customers than from its more distant customers.

"Assume, also, that when selling for delivery at destinations governed by other base-point mills the mill net prices of each base-point mill also vary between its respective customers depending on the differences in freight to their respective destinations, higher mill nets being received from customers in territories governed by it than from customers in territories governed by other basing point mills.

"Assume, also, that substantial shipments are being regularly made by base-point mills into the territory governed by other basing points.

"Take all of those things together and then tell us whether or not, in your opinion, that corresponds to any sort of competitive method of pricing with which you have become familiar in the course of your studies and experience?"

And to this Dr. Fetter replied.

Mr. MacIntyre: Just a moment.

That is objected to, to read to this witness now what some other witness has replied in answer to that question.

45484 By Mr. Withrow:

Q. Professor, taking that description which I have read to you about four questions back, now, as a general description of the industry, does it correspond to any method of pricing which you recognize as being competitive?

A. Yes, it represents a type of pricing which we describe as imperfect competition.

Q. Now, in your opinion, are the marketing and pricing methods described in that question which Mr.
45485 Wooden put to Dr. Fetter consistent with the existence of competition, or does their existence imply to you collusion or conspiracy?

A. It seems to me consistent with competition; does not imply collusion or conspiracy.

Trial Examiner Norwood: Doctor, have you made a study of the basing-point system?

The Witness: Yes.

Trial Examiner Norwood: And you consider that basing an opinion on those hypotheses there is within the range of your expertness?

The Witness: Yes.

45487 Q. Professor, if a seller quotes and sells at a price laid down at the customer's warehouse or the customer's destination, would you tell us whether or not, in your opinion, the price is the delivered price, the price at the point of delivery, or the mill net; that is, the delivered price, minus the transportation charges?

A. The price refers to the destination, and does not refer to the mill net.

By Mr. Withrow:

Q. Now, Professor, in making that answer, would you tell us whether or not, in your opinion, it makes any dif-

ference whether the seller owns the transportation facilities?

A. No; it does not make the least difference.

45489 Q. Professor, would you tell me whether or not you would agree with a statement to the effect that if we are discussing an industry that produces and sells cement and does not produce and sell transportation, that is not its business, it does not own a plant, it does not conduct a railroad industry, then, in connection with any matter of discrimination, it would be the actual price, the net realized price obtained by the industry in the sale of cement: Do you agree with that, or would you not agree that that was a proper analysis of what constituted price in such an industry?

45490 A. I would not agree that that is a proper analysis of price.

Q. Well, under the description in the hypothetical question which I have quoted at some length—that long one which Mr. Wooden propounded, which describes the method of the price and selling of cement, what is that description is price in the economic sense?

A. The price in the economic sense is the price at the point of delivery—destination price.

Professor, has the problem of competition been one that has always constituted one of the fundamental problems of economics?

A. Oh, yes. It has bulked very large in economic literature, particularly the theoretical parts of economics.

Q. And has it received any particular attention in recent years?

A. Yes, very decidedly so.

Q. Would you say that these recent studies of competition are a development of the views of the older economists, such as Adam Smith, or are they a departure from the older views?

A. Well, they are a development in the sense that science progresses. The emphasis in recent years has been different; the approach has been different; the technique has been different.

Q. Are there certain terms with reference to competition that are in use among economists today?

45491 A. They use the words "perfect competition," "free competition," "imperfect competition."

Q. And with which one of these types of competition would the classical economist be principally concerned?

A. Perfect.

Q. Now, taking the term "perfect competition," how would you define it, Professor?

A. Perfect competition is the rivalry of sellers to sell their product to prospective buyers. It requires a very large number of sellers, so large that the offering or withholding by any one of them of his portion of the supply does not affect the market, except infinitesimally, possibly. It requires a homogeneous commodity. It requires informed buyers. It requires the free movement of capital and labor—the factors of production into and out of the industry.

Q. Now, what is meant by the term "imperfect competition"?

A. Well, imperfect competition would be competition in which some one of these criteria of perfect competition is not existing or limited.

Q. Well, is there at the present time, or would you say that there has ever been in this country perfect competition in the sale of manufactured goods?

A. No.

Q. Would you say that imperfect competition is rare or the common type of competition which is found
14492 in manufacturing industry today?

A. I would say that imperfect competition is almost universal, if not wholly so.

By Mr. Withrow:

Q. Now, does the addition of the word "imperfect" imply that you have no competition, Professor?
15493 A. Not in the least.

By Mr. Withrow:

Q. Does the term—

Trial Examiner Norwood: Does it imply that you have no practical competition?

The Witness: I do not see any reason for the adjective "practical."

By Mr. Withrow:

Q. Does the term "imperfect competition," as used by economists, necessarily imply collusion or agreement between sellers?

A. No; not at all.

Q. Has the introduction of large scale factory production had any effect on the type of competition which can exist in an industry?

A. It has quite impossible to have perfect competition under large scale production.

Q. Could you tell us briefly why?

A. It means that there can be but relatively few producers, and that is contrary to one of the first hypotheses of perfect competition.

45484 Q. As economists use these terms "perfect" and "imperfect," do they have any relation to the question of legality?

A. No.

Q. Now, the complaint in this case, Professor, charges that practices in this industry have destroyed competition in price. Do you consider that it is possible to separate competition in price from other elements of competition, such as quantity, quality, services, et cetera?

A. No; it is impossible to separate it.

Q. Now, assume that the testimony has shown that at any given point where there is demand for cement the representatives of different manufacturers are each calling upon the trade individually to secure the business for their respective companies by building up purchaser good will through prompt and efficient delivery, the satisfactory handling of claims for losses or shortages and of allowances for returned bags; by assisting the dealer in making sales; by securing prices for a dealer or contractor on commodities other than cement needed for a specific job; by supplying free water or other items for use on the job; by the use of the most convenient type of railroad cars for bulk shipments; by shipments in proprietary trucks in small lots; by calling to the purchaser's attention jobs where cement would be used; by rendering service to the purchaser in the form of engineering services and assisting him in other ways in the handling of cement; would you say that under such conditions price competition
45495 was present even though the amount in dollars and cents demanded by the different salesmen was identical and all other terms of sale were identical?

45496 A. Why, yes, competition is the rivalry of those sellers, and surely all of those are, as I understood parts of this rivalry, elements of this effort to sell goods.

By Mr. Withrow:

Q. Now, suppose, Professor, that we eliminated any one of these services that was listed, would that change your answer to the last question?

A. No. It would simply mean that this particular method of rivalry was closed but all the others were open.

Trial Examiner Norwood: Are you assuming that these various services are different as between the sellers?

The Witness: They may or may not be.

Trial Examiner Norwood: That would not make any difference in your answer?

45497 The Witness: No; many of the services might be identical, but there might be additional ones.

Trial Examiner Norwood: That are different?

The Witness: Or might be done better, or things of that order.

By Mr. Withrow:

Q. Professor, if the theory should be advanced that the system or method of pricing that Mr. Wooden described in that long question of his is a method or system of meeting competition, would you agree with that, or would you disagree?

A. I think it is a description of a competitive system, and that meeting of, matching of prices, as he calls it, I believe is a method of competition.

Q. Would you agree with this statement, that if the term "meeting competition" is supposed to be synonymous with a method of price competition "I would say no. I would say it is a system of matching prices so as to avoid competition, and that in a system of that sort I would interpret a price practice of that sort as intended to avoid price competition rather than as a routine carrying out of the practices of competition."

45498 Q. Do you think that that accurately describes the method contained in that hypothetical question of Mr. Wooden's?

Mr. MacIntyre: May we have the first part of the question read?

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. MacIntyre: I object to the form of the question.

Trial Examiner Norwood: The objection is sustained.

45500 Mr. Porter: Your Honor, may I ask a question to you?—

Trial Examiner Norwood: Yes.

Mr. Porter: —so that I can upunderstand what the position is.

Does Your Honor rule that the Respondents now cannot have an expert witness take direct issue with the testimony of an economic witness called by the Commission and say that that testimony is erroneous?

Trial Examiner Norwood: I am ruling now that in the present state of the record I will not permit these questions to be read from the record in the way it is.

Mr. Porter: That does not quite answer my question.

Trial Examiner Norwood: In the way Counsel is doing now.

Mr. Porter: That does not quite answer my question.

Trial Examiner Norwood: I do not have to answer your question.

Mr. Porter: I know you do not have to, but I would be obliged, and it would help us if we can have a direct answer to my question.

Trial Examiner Norwood: The direct answer to
45501 your question is "No."

45504 By Mr. Withrow:

Q. Professor Westerfield, I want to direct your attention again to that long hypothetical question of
45505 Mr. Wooden's, and ask you whether or not that description is a discription of a system of matching prices to avoid competition?

A. No, this is a description of competition; matching of prices is competition.

Q. Professor, does an economist expect a standard or homogeneous commodity to sell at a uniform price in any one market?

A. If the buyers are informed and if there is competition, at a time that should be.

Q. Well, would you tell us whether or not that is the consensus of economists, that statement you just made?

A. I think all; every economist recognizes that.

By Mr. Withrow:

Q. Professor, would you tell us whether or not
45506 you consider that this principle is applicable to an industry selling at delivered price?

A. Yes.

Q. Will you state whether or not there is such a tendency towards uniformity of price for a standard or homogeneous product irrespective of the method of marketing employed?

A. If there is competition and buyers were informed, it makes no difference as to the form or method of marketing.

Q. Professor, answering that question, you said, I believe, it was "if competition exists." Would you tell us whether or not in order to have this tendency there has to be perfect competition, or can it—

A. Either perfect or imperfect.

Q. Now, would you state whether or not the fact that prices are known to competitors and the fact that an orderly method of marketing is employed have any tendency to produce such a uniformity of price in the case of a standard or homogeneous commodity?

A. Yes, there is such tendency.

Q. Assume that cement is a homogeneous commodity; that it is usually sold at delivered prices; that it is a heavy and bulky commodity, so that freight is an average of approximately 25 percent of the delivered price; that there are a number of manufacturers offering to sell at each destination; that the buyers, including dealers, 45507 contractors, and governmental officials, are well informed on market conditions and prices; that each manufacturer is constantly and immediately informed by his salesmen and customers of the prices being quoted by all of his competitors; that the capacity to produce by the manufacturers is in excess of the current demand.

And assume that there is no agreement or understanding between the manufacturers as to the prices they will charge, but that each manufacturer determines his own price independently for himself, and that such prices are the result of free competition.

Would you expect the openly quoted prices at each destination to be generally uniform or different?

45508 A. They would be uniform, because it seems to me that there is competition here, and also the buyers are informed.

By Mr. Withrow:

Q. Now, assume cement is a homogeneous commodity; that it is usually sold at a delivered price; that it is a bulky and heavy commodity, so that freight is an average of

approximately 25 percent of the delivered price; that there are a number of manufacturers offering to sell at each destination; that the buyers, including dealers, contractors, and governmental officials, are well informed on market conditions and prices; that each manufacturer is constantly and immediately advised by his salesmen and customers of the prices quoted by all of his competitors; that the capacity to produce by the manufacturer is in excess of the current demand;

And assume that the prices openly quoted by different manufacturers at the same place and time are consistently uniform.

Will you state whether the fact of such uniformity, to you as an economist, justifies an inference that such prices are the result of collusion or agreement?

45509 A. I see no grounds for an inference of collusion.

By Mr. Withrow:

Q. Now, Professor, assume that a number of manufacturers, through their salesmen, solicit orders from a dealer located in one town, and this dealer ultimately buys from one of those companies so solicited, where is the market?

A. The market is at the destination point, at the town of purchase. That is where the price applies.

Q. That is the delivery point?

A. The delivery point.

Q. Now, the question that I am about to ask you, Professor, is one that for convenience sake I am going to describe from time to time as the defense long hypothetical question, or my long hypothetical question, and whenever reference to that is hereafter made I will ask you to answer with reference to the assumptions that I am now going to state.

Let us assume that the following description is a statement of the conditions of the cement industry as of the present day, considered to be July 1, 1937; that is the day before the complaint was issued.

Assume cement is a homogeneous commodity. There are approximately 150 cement mills, scattered throughout the United States, owned by more than 50 separate independent companies. Cement mills usually have
45510 large capacities with large capital investments. The capacity of most mills exceeds the local demand. Freight is a substantial part of the cost of cement delivered to the point of use or resale. The volume of the

demand for cement varies in each locality from year to year and month to month. Sometimes there is a large demand in a given market and at other times there is a small demand in that market. The manufacturers of cement which market their product in any given territory are engaged in a struggle for tonnage.

There are a very large number of buyers, and they are scattered throughout the country. At any point of substantial cement consumption there are several buyers. Buyers of cement (including dealers, contractors and other purchasers) are well informed with respect to the prices charged and the methods of sale employed by competing manufacturers. Buyers purchase on the basis of the lowest cost at the point of use or resale. For more than 20 years buyers have refused to pay any more for one brand of domestic cement than another. For more than 20 years cement has usually been quoted and sold at destination prices. Buyers of cement normally request prices f. o. b. destination. From time to time some manufacturers have, upon request, made sales to customers f. o. b. mill.

In quoting prices a manufacturer usually takes into consideration the prices which have been quoted by his competitors for delivery at the destinations in question. At any destination the openly quoted delivered price 45311 appears to reflect some pattern. The most prevalent of these patterns is the lowest combination of some price base plus actual freight from the basing point. Another pattern appears to exist when the same price is quoted at a number of adjacent destinations (such prices having sometimes been called in this case flat or zone prices). A third pattern appears to exist when prices radiate from some market area (such prices having been sometimes called in this case arbitrary prices and have been made around some ports to meet the competition of foreign cement, and at other places to meet other competitive conditions). Flat, zone and arbitrary prices do not reflect the variations in actual freight charges.

Fifty or more mills are basing-point mills and about 60 percent of the productive capacity of all mills is located either at or within a few miles of basing-point mills. These basing-point mills are scattered throughout the country. Each manufacturer can at any time make its mill or plant a basing point mill. At different times the same mill has been a base mill and a non-base mill. The total number of

base mills has varied from time to time. All manufacturers, including those with basing point mills, shrink their mill nets in making sales at distant points.

Whenever a lower price is openly quoted by one manufacturer, other manufacturers selling at that destination have found it necessary either to reduce their deliv-
45512 ered price to meet this lower price or to withdraw from actively soliciting business at that point. It has been the experience of each manufacturer that an open reduction in prices is met immediately by competitors, and that a quoted reduction in prices does not bring a compensating increase in the cement consumed where the decrease is effective nor a compensating increase in the sales of the manufacturer initiating the decline. Each manufacturer has invested considerable time and money in developing channels of distribution, such as dealers and contractors. A mere reduction in price does not ordinarily drive a manufacturer out of a consuming area where it has developed customer good will. It has been the experience of each manufacturer that an open reduction in price has, from time to time, provoked further reductions in price by competitors. Such open price reductions have sometimes resulted in price wars.

For more than 20 years most manufacturers have regularly broadcast their prices to the dealer trade. In quoting decreases in price a manufacturer usually makes it effective at once and buyers are usually reimbursed for shipments made just prior to the decline. In quoting increases in price a manufacturer usually makes it effective in several days after the announcement is received by the trade. In the event of an increase no sales are made at the higher prices unless all competing companies announce that they are following the increase, and no such sales are
45513 made until the quotations of all the companies competing in a given market have become effective. Any manufacturer, no matter how small, can initiate an effective decrease in price.

For more than 20 years dealers and contractors have been protected on specific job contracts in the event of an increase in price, and have been given the benefit of the new low price in the event of any decline in price. Upon an increase in price dealers and contractors are protected on spot shipments by having an opportunity to buy any quantity of cement for which they will take shipment within

15 days after the increase has become effective in that market. Various manufacturers have found that they do not sell a substantial quantity of cement at their increased price even if their competitors followed the increase until several months after the increase became effective.

Some manufacturers have quite consistently adhered to their publicly quoted prices and other manufacturers have made sales at reductions from their publicly quoted prices, such sales being intended to be secret prices. Other manufacturers have made sales reflecting special terms or concessions not contained in their open price announcements. The announcements to the trade of these manufacturers which made secret prices or concessions quote a price not below the lowest openly quoted price of any competitors.

These secret price cuts often become known to com-
45514 petitors. There have usually been some secret prices, concessions or variations in terms being made by various cement companies. The volume and amount of such secret prices have tended to increase when the demand for cement was small.

Customers often give manufacturers an opportunity to meet the lowest price available to them whether it is publicly or secretly quoted. Manufacturers have observed that if a special price is quoted to one customers, other customers upon learning of this fact demand similar concessions. When competitors learn of such price concessions they frequently meet such lower prices either by granting similar concessions at the same or other destinations, or by openly announcing a general price reduction which affects a large consuming area. Manufacturers have been shown from past experience that extensive secret price concessions in many markets may result in open price wars.

There have been price wars in the cement industry. In the event of price war prices have been reduced to a level approximating the out-of-pocket costs of production. Price wars continue until some manufacturer takes the initiative in raising prices and his lead is followed by his competitors. The quoted price at any given destination does from time to time remain stable for long intervals except to the extent of changes in freight rates. In some markets there have been periods of time up to three or four years where
45515 the lowest quoted price has not changed, except to the extent of changes in freight rates.

Diversions in transit are usually not permitted by manufacturers, and they try to discourage and prevent diversions. Many manufacturers in widely scattered parts of the United States do not permit dealers to come to their mills and take delivery by truck. Some receive no requests from customers for truck delivery. Some manufacturers allow dealers to come to the mill and take delivery by truck. Such sales are frequently made at the same price as though the cement had been delivered to the dealer's warehouse.

Now, Professor, please state whether or not, in your opinion as an economist, the marketing practices as described could logically be the result of an economic development in such an industry?

45516 A. The description of the industry presented by the hypothetical question presents a logical economic development.

By Mr. Withrow:

Q. Under those same assumptions, Professor, will you state whether or not that you consider that the marketing practices as described preclude the existence of free competition?

A. No.

Q. Will you state whether or not the marketing practices as just described indicate to you, as an economist, that they were arrived at by collusion or conspiracy?

A. No; there is no implication that that was the method of arriving at that.

45517 Q. Professor, let us assume the following description is the general story of the development of the marketing methods used in the cement industry:

The manufacture of Portland cement in the United States commenced in the later part of the Nineteenth Century. Around 1870 several mills were built in the Lehigh Valley in the northeastern part of Pennsylvania where there was a deposit of a so-called cement rock. Until about 40 years ago, most Portland cement used in the United States was imported from Europe, and moved into the interior from the Atlantic seaboard. Most of this imported cement was sold to distributors f.o.b. dock. The distributor shipped the cement to the point of use, where he resold the cement to the ultimate consumer at a delivered price. At that time foreign-produced cement was considered by most purchasers to be superior to domestic cement.

For a time it was commonly believed that the Lehigh Valley was the only locality in the United States where high quality cement could be made. After some years it was discovered that a satisfactory Portland cement could be manufactured elsewhere by blending various materials. Thereafter mills were built in various parts of the country, so that today there are approximately 150 mills scattered throughout the United States. Originally, some brands of Portland cement sold at a premium over other brands, but all domestic Portland cements have for over 25 years ex-
45518 ceeded the published minimum standard specifica-
tions and for over 20 years customers have refused to pay more for one brand than another. In the early days the Lehigh Valley mills shipped cement all over the United States. At first domestic Portland cement was sold usually f.o.b. mill to cement distributors, who resold to cement dealers and consumers at a price f.o.b. point of use, freight has always been a substantial part of the delivered cost. Some of the new western mills sold direct to dealers, and consumers, and when dealers were sold at or about the same price as distributors, the latter gradually died out and have not generally existed for the past 25 years. The competition by these new mills was continued, and prices were reduced by the Lehigh Valley mills. The older manufacturers slowly eliminated their distributors and made their sales direct and they took over the marketing practices, as well as the functions of the distributors. With the elimination of the distributor, there were three major factors leading to the selling at delivered prices, and that these were (1) the manufacturer stepped into the shoes of the distributor who had been selling at delivered prices, (2) dealers requested delivered prices or information so they could compare delivered costs, and (3) the necessity of meeting competition of newer mills. Dealer customers, being used to delivered prices from distributors, requested either delivered prices or information as to the amount of freight charges. Cement continued to
45519 be sold in some instances f.o.b. mill with the freight costs to point of delivery in cents per barrel often set forth in the quotations made by various manufacturers and in other instances f.o.b. destination. With the inception of this practice by a few manufacturers, purchasers usually requested cement prices on a delivered basis. Gradually, most manufacturers acceded to the deal-

ers' requests. Prices on cement came usually to be quoted and sales made on a delivered price basis.

As new mills were built in the Middle West and successively in other parts of the country which were nearer freightwise to various consuming markets, than the Lehigh Valley mills, these new mills found that buyers purchased cement from that company which sold at the lowest delivered cost, so that the western mills either met the competition of the older Lehigh Valley mills by quoting delivered prices which were as low as the prices quoted by the Lehigh Valley mills or quoted lower prices. Some of the Lehigh Valley mills met the lower prices of the new mills by reducing their prices at such destination points. This process was repeated in many instances until one, and later a number, of these new mills quoted delivered prices which usually represented the sum of some fixed figure at the new mill point plus freight to destination. At first some of the Lehigh Valley mills attempted to meet this new competition by using varying and different f.o.b. mill prices in quoting for sales to purchasers at destinations nearer freightwise to the new mills than to the Lehigh Valley mills. Some of the 45520 eastern mills found that the practice of varying their f.o.b. mill prices resulted in customers' complaints and loss in good will, and made it difficult to meet the competition of the delivered prices quoted by the new western mills. As a result, they met the delivered prices quoted by their western competitors by quoting delivered prices. These prices usually reflected the sum of some base at a new mill plus freight to destination. As new mills were built throughout the country, this process was repeated as to some of the mills which made their delivered prices the sum of some base at their mill plus freight to destination, thus making their mills basing points, while some of the new mills did not make themselves basing points but quoted delivered prices to meet the prices quoted by competing mills; that such non-base mills are generally small mills or distant from large consuming markets.

About 1910 the practice of broadcasting quotations to customers and prospective customers was initiated by one manufacturer and thereafter other manufacturers also distributed printed quotations to the trade.

Cement prices generally came to be quoted on a de-

livered basis. From 1900 until 1930 the volume of cement consumed in the United States steadily increased. There has been from time to time an actual shortage of available cement in various markets. New mills were built either to meet the increased demand or as promo-
45521 tional ventures. Mills have usually been built at the site of satisfactory raw materials. Such material are heavy and expensive to transport for any distance. Most mills are systematically kept up to date with the newest equipment. The product has been improved in quality. Such improvements in the product have increased costs of production. Many manufacturers have gone into bankruptcy and mills have been abandoned.

Under these assumptions, will you state whether or not you consider that the historical development as described in these assumptions precludes the existence of free competition?

A. This description of the industry does not preclude the existence of competition.

45522 Q. You use the word "competition," and in my question I use the words "free competition."

A. It does not preclude the existence of free competition.

Q. Would you state whether or not, in your opinion as an economist, the historical development is one which you would normally expect to find in an industry of this type?

A. I do.

45523 Washington, D. C.,
Friday, October 4, 1940.

45524 PROFESSOR RAY BERT WESTERFIELD thereupon resumed the stand and testified further as follows:

*Direct Examination by Mr. Withrow (Continued).*

45524 Q. Professor, assuming the following statement: Cement is a homogeneous commodity and buyers will not pay more for one brand of cement than another. Buyers almost always compare the cost of the product laid down at the point of use or resale in making purchases of cement. Buyers are well informed with reference to prices quoted and market conditions. Feight is a substantial part of the laid down cost of cement.

45526 There are approximately 150 cement mills scattered throughout the country. These mills are owned by more than 50 separate independent companies. Cement mills usually have large capacities with large capital investments. The capacity of most mills exceeds the local demand. Manufacturers have found that reductions in price do not bring a compensating increase in cement consumption.

Cement is usually sold at delivered prices. The prices quoted for cement by various manufacturers at any given destination are usually the same. Some manufacturers do from time to time make secret price concessions. The number of such concessions granted varies from time to time and such concessions usually become known to competitors. All manufacturers shrink their mill nets in making sales at distant points.

Cement is often shipped from one mill into the territory immediately adjacent to some other mill. Manufacturers usually refuse to allow customers to take delivery of cement in customers' trucks at the mill. Manufacturers usually do not permit diversion of cement in transit.

Now, please state whether, in your opinion as an economist, the marketing practices as thus described could logically be the result of an economic development in such an industry?

45527 A. In my opinion, it could be a logical development of the economic circumstances.

By Mr. Withrow:

Q. Now, under the same assumptions, will you state whether or not you consider that the marketing practices as described in these assumptions preclude the existence of free competition?

A. No, I do not believe that they preclude the existence of free competition.

Q. Will you state whether or not the marketing practices as just described indicate to you, as an economist, that they were arrived at by collusion or conspiracy?

A. I do not believe that they indicate that the
45528 development is based on collusion or conspiracy.

By Mr. Withrow:

Q. Now, in addition to the facts assumed in that hypothetical question I asked you just a moment ago, I will ask you to assume the following:

The quoted delivered prices are usually the equivalent of the lowest combination of some price base, plus rail freight to the destinations in question.

What effect would that have upon your answers to my last three questions, Professor?

A. It would not have any effect on them.

Q. Now, we have used from time to time the word "free competition." I wonder if you would define, just briefly, what you understand by the term "free competition"?

A. Competition in which there is no collusion or outside pressure from the Government, so that each buyer and seller can act independently for his own self-interest.

Q. Do you believe, Professor, that the early practice of selling f.o.b. mill in an industry, such as described in my long hypothetical question, could not have been abandoned and the practice of selling at delivered prices come into being, that is, delivered prices by the use of multiple basing points come into being, except as a result of conspiracy and collusion?

45529 A. Well, I believe that the f.o.b. method of selling could have been abandoned, and the delivered
45530 price system adopted, or come into being, without collusion and conspiracy. It could have become adopted through individual self-action for his individual self-advantage.

By Mr. Withrow:

Q. Now, Professor, assume that cement is generally sold at delivered prices, and that one manufacturer abandoned the practice and sold his cement exclusively on a uniform f.o.b. mill basis, and that the other competing manufacturers continued their practice of meeting quoted prices in various markets. What would be the economic result to the manufacturer making the change?

45531 A. Well, if one manufacturer abandoned the delivered system of prices and went over to the f.o.b. method, his freight-absorbing sales would be lost. The sales where there had been no freight absorption, possibly, need not be affected, except that in this territory he would still be subject to a penetration of his market by competitors who continued to use freight-absorbing sales, and in any case it would seem that his market, being smaller and subject to such penetration, would be more unstable than before.

By Mr. Withrow:

Q. Now, assuming that a new mill should be built, and that instead of conforming to or adopting individually the existing industry marketing practices, it sold exclusively on a uniform f.o.b. mill base, while the other competing manufacturers continued their practice of meeting quoted prices in various markets, what would be the economic result to this new mill?

45533 A. If a new mill were established and sold exclusively on a uniform f.o.b. basis—f.o.b. mill basis, it would find its situation very difficult. Its market would be narrowed, because it could not employ freight-absorbing sales to distant places. On the other hand, it might be subject to the penetration of its own market by outside competitors who did sell on a freight-absorbing basis, and its narrowed market would be unstable.

By Mr. Withrow:

Q. Professor, would you infer conspiracy or collusion from the mere continuance of the pricing method described in my long hypothetical question?

A. No, I do not believe that it is necessary for collusion and conspiracy to continue to have such a method of pricing and marketing continued.

Q. In your opinion as an economist, would it be pos-

sible for a company acting in its own self-interest to break away from the pricing method described in my long hypothetical question?

A. I think it would be very difficult. If it asked
45534 higher prices, having broken away, it would be impossible for it to sell. If it asked lower prices, they would be met, and it would not be able to expand its sales.

Q. Now, will you also state whether or not such a method of marketing as described in my long hypothetical question facilitiates the meeting of local fluctuations in demand?

A. Yes; very much so. If the demand about a mills' territory, where it has the freight advantage, fluctuates a great deal through special contract orders, or what not, it is possible for that expansion of the demand to be met by freight-absorbing competitors from the outside without a rise in price. If the price did rise, that would induce more freight absorption; so that the expansion of the demand is easily taken care of. The contraction of demand could be met simply by the freight-absorbing sales of competitors declining in the market.

Q. Would you, as an economist, infer collusion if a producer in competing with other producers exercised a degree of self-restraint in his price and policies?

45535 A. No, I think that every business man wishes— expects a degree of self-restraint on the part of others, and he exercises it himself. It does not require collusion.

Q. Well, if such self-restraint is not exercised under such conditions, but is thrown to the winds, what would be the effects which you as an economist, would expect?

45536 Mr. MacIntyre: I object to the language used there. It certainly is not proper in a question of this kind. Any answer given to the question cannot be of any value.

Trial Examiner Norwood: I think this is entirely too vague.

The objection is sustained.

Q. Well, if a seller does not exercise any self-restraint in his pricing and marketing methods, what are the economic effects which you would expect?

Mr. MacIntyre: That is objected to on the same grounds.

Trial Examiner Norwood: Sustained. I think it is the same question, practically.

Mr. Withrow: I offer to prove through this witness, if he were permitted to testify, that the want of self-restraint by an individual producer in competition results in selling without regard to costs and results in cut-throat competition, resulting in ultimate failure for all but the lowest cost producer, and perhaps even fail-
45537 ure for him, inasmuch as under the hypothesis of selling without refefence to self restraint even the lowest cost producer, like the rest, offers to sell at prices regardless of cost. The industry would become very unstable, market prices erratic, unpredictable, undependable, and business and industrial enterprises become mere speculation, and that the economic waste resulting from such failures becomes a heavy burden on national economy.

45538 Trial Examiner Norwood: I think you have to lay your grounds first.

The objection is sustained.

Counsel has his exception.

By Mr. Withrow:

Q. Does the method of selling which has been described in the defense long hypothetical question appear to you, as an economist, to be one which could normally develop and continue because it was believed by each producer to be in his individual self-interest?

A. It does.

Q. Professor, are there certain conditions which you could enumerate for us under which you, as an economist, would expect a basing-point method of selling to be adopted by the members of an industry?

45539 A. Yes, there are.

By Mr. Withrow:

Q. Now, would you enumerate them for us, Professor?

A. The characteristics of such an industry would be freight was a very large item, that the capital invested in building the plants and operating the industry was very large; that there would be a heavy pressure for tonnage; that there would be a homogeneous commodity, that there be many mills broadly scattered, that the demand would be fluctuating, that the commodity would be homogeneous. I think those are sufficient.

Q. Would you say as an economist that this
45540 basing-point method of selling is a natural and reasonable method of selling for such an industry meeting those conditions which you have just outlined?

A. Well, it would be natural in the sense that it grew out of certain basic economic circumstances. It is natural in the sense of resting in part upon the characteristic demand, an orderly method of marketing, dependability, and stability, surely rational in the sense that it is serving the sellers and the buyers, and at least those are some of the ways in which it seems to be normal and rational.

45541 Mr. Withrow: Have you finished your answer, Professor?

The Witness: I was using the word "rational" in the sense of reasonableness.

By Mr. Withrow:

Q. Would you say, Professor, that in an industry such as described in my long hypothetical question where you have large production it is necessary that there be some orderly marketing method?

A. Very necessary. Business men have to plan
45542 their business hoping to get enough between cost of production and selling price to cover, to make a profit and to carry it out according to plan.

Q. In your opinion would it be possible to handle the activities of a large organization of salesmen and others in business without having some method of marketing?

A. No, it is utterly impossible.

Q. Can you give us any method which, in your opinion, would be better adapted than the basing-point method from the point of view of the dealer?

Mr. MacIntyre: I object to that as asking for something that is not in issue here.

Trial Examiner Norwood: Sustained.

Mr. Withrow: I offer to prove that this witness would testify, if permitted, that in his opinion he could not think of any improvement which could be made from the standpoint of the dealer over the present basing-point method, as described.

By Mr. Withrow:

Q. Turning now to the standpoint of the consumer, the ultimate user of cement, can you give us, Professor, any method of marketing which would be better adapted to his interests than the basing-point method?

Mr. MacIntyre: Same objection to this question as to the preceding question.

45543 Trial Examiner Norwood: Sustained.

Mr. Withrow: I offer to prove that this witness, if permitted to testify, would testify in his opinion there is no method of marketing which would be better adapted to the ultimate consumer's interest than the basing-point method.

Q. Are there certain forces which an economist would say tended to perpetuate a method of selling once it had become established and generally used in an industry?

A. Yes, there is inertia and custom; there is the difficulty of breaking away from an established pattern; after an established pattern becomes—after a pattern becomes used, established, the offices and loading facilities, allied business, perhaps, grow up according to that lay-out, and it is very difficult to change that.

Q. Now, Professor, how would you define the phenomenon of dumping?

A. Dumping refers to the sale—it is mostly used in international trade, and refers to the practice of a producer selling a part of his product abroad, usually at such price as it will bring.

Q. In the base of international dumping, as you have defined it, what is the economic aspect or the result of such international dumping on the market in which the goods are dumped?

45544 A. Well, of course, it adds to the supply there, and, therefore, has a depressing effect on the market. It may, of course, even make it chaotic.

Q. What effect does it have on competition in that market, Professor?

A. It tends to intensify it.

Q. Did your first answer in which you defined "dumping" include as a form of dumping the selling of cement at delivered prices with the use of basing point and freight absorption?

A. It did not. As I was thinking in terms of international trade, but the term "dumping" might well be applied to domestic trade, to the use of freight-absorbing sales.

Q. Well, how would the economic effect of such dumping of the national trade compare with the economic effect of dumping in international trade on the price of the goods and on competition?

A. I think they would be very comparable. The person who—the producer who was selling a part of his product abroad is able to maintain his domestic price and custom, and to offer the excess production at a distance. He is able to keep his mill going, and the effects at the point of sale would be comparable in that more product is offered for sale.

Q. In your opinion, Professor, could the practice of dumping in a domestic market occur only when there is monopoly control in the market at which the commodity was being produced?

45545 A. Did you say the international market?

Q. No; the national market.

A. No, any mill could make freight-absorbing sales, which would be in the nature of dumping.

Q. Would you expect, professor, that when dumping occurs in international trade it is always the case that the dumped goods are sold in the foreign market at a less price than the going price in that market for domestically-made goods?

A. I could not see any reason for that. The exporter would normally have no purpose in offering his goods for a lower price than they need to take over there. The only time in which he would do that would be where his purpose was to ruin some competitor.

Trial Examiner Norwood: Well, suppose he finds a prejudice against imported goods at this place.

The Witness: That might make it necessary for him to sell for less, but he would do it reluctantly, I believe.

By Mr. Withrow:

Q. Would you agree that in the case of international dumping where the exported goods merely match the price of domestic goods there was no such parallel in international trade?

A. It seems to me that the person who is dumping offers his goods for the going price in that country, in that sense it is a matching of price or meeting of price.

45546 Q. So that in your opinion, if I understand you correctly, there is a parallel to matching in international trade?

A. Yes.

Trial Examiner Norwood: That is, do you say that that actually happens in international trade?

The Witness: Yes.

Trial Examiner Norwood: Where the imported article merely meets the price of the domestic article?

The Witness: I feel certain that it does. There is no reason for the sellers selling for less, ordinarily.

15548 By Mr. Withrow:

Q. As an economist, what would be your opinion as to the effect of abolishing this so-called dumping in the cement industry as compared with the effect of prohibiting dumping in international trade?

A. I think the effects would be very comparable.

By Mr. Withrow:

Q. And what would you expect the effect to be, Professor?

A. Well, the market would be narrowed if dumping were abolished. The domestic manufacturer who was not exporting but who was using freight-absorbing sales would be in the same position as the exporter who was us-
15549 ing freight-absorbing sales, or at least selling abroad, selling part of his product abroad.

Q. Would it have any effect on the amount of competition in the market?

A. It would reduce the amount of competition in the market because you would have fewer sellers at any particular point.

Q. Well, how would dumping be abolished in the cement industry?

Trial Examiner Norwood: I think we are getting off the field of relevancy entirely.

The objection is sustained.

15550 Mr. Withrow: I offer to prove that this witness would testify, if permitted, that in order to abolish the so-called dumping in the cement industry it would require legislative action prohibiting the absorption of freight.

Q. Let us now assume, Professor, that we are selling from two mills, mill "A" and mill "B", under the present method in selling as described in my long hypothetical question, and that each of these mills is selling not only in its own market area where it makes the price, but is also, by freight absorption, selling a portion of its product in the other mill's territory; and let us assume that one of these mills desired to change over to a uniform f.o.b. mill plan; and we will call this mill "A"; would there any ad-

vantage to mill "A" to suddenly cease making freight-absorbing sales into "B's" territory?

45551 A. I see no advantage in that.

By Mr. Withrow:

Q. Well, assume that mill "A" has taken this step in spite of not receiving any advantage, and has ceased making sales in "B's" territory, would there be any advantage received by mill "B" in following the same policy and ceasing to sell in "A's" territory?

A. No; because it would simply reduce its sales territory, and, therefore, its total volume of sales.

By Mr. Withrow:

Q. Now, under these assumptions that we have just been considering, if mill "A" had adopted such a policy and mill "B" had not followed this but had followed the former policy of making freight-absorbing sales, would you expect mill "A" to continue its practice or return to the former practice of selling the freight-absorbing sales?

A. I assume that mill "A," having found that it could not get any advantage from this practice, would return to its fold.

Q. That is, return to the making of freight-absorbing sales?

A. Yes.

Q. Now, under the conditions as I have stated them, would you, as an economist, expect mill "A" or mill

45552 "B" to take such a step, going under this f.o.b. mill method of sales?

A. I think mill "A" would be very hesitant to do it, especially if it had had any experience in trying it once in the past.

Q. Now, Professor, assume that on sealed competitive bids of governmental bodies, experience has shown that the final award is made on the basis of the total cost at the point of use, including freight, and that it has also happened on a number of occasions that when, on competitive bids, one company bids a price lower than his competitor, the business is not awarded to such low bidder, but sometimes after such low bid is made public all bids are thrown out and new bids are asked, when all bidders are as low as or lower than the original low bidder, and it also happens that the governmental agency has permitted other bidders to reduce their prices without a new letting either to meet

the original low price or to make an even lower price; and assume that it has happened that when a company has bid on a competitive governmental letting a price less than its going commercial price at the destination in question, a competitor has usually reduced his commercial prices, so that such reduced governmental price has often, or usually, been followed by a general reduction in commercial prices, can you, as an economist, state how you would expect a manufacturer to bid on a sealed bid to a governmental body?

45554 A. My expectation is that the sellers would not offer the Government a lower price than they did the commercial trade. It seems that the Government is a difficult institution to deal with, from the hypothetical question given.

By Mr. Withrow:

Q. Well, if in that last sentence it were changed to read that in several cases, when a company has bid on a competitive governmental letting a price less than its going commercial price at the destination in question, and the competitor in some cases reduced his commercial prices, so that such reduced governmental price has in some cases been followed by a general reduction in commercial prices, would that change of the assumptions in my last question change your answer in any respect? If so, tell us in what respect it would change it.

45555 A. No; it would not make any difference.

By Mr. Withrow:

Q. Now, Professor, if the Government asked for bids f.o.b. mill, would you expect the f.o.b. mill price bids to be made with reference to the destination cost available to the Government from other sellers?

A. Yes. If other sellers were likely to bid on this governmental letting, they would take into consideration what these other sellers are likely to bid, according to the pattern of the industry.

Q. And if the f.o.b. mill bids were thus met, taking into account the laid-down cost available to the Government from other sellers, would your expect these destination costs of the bidders to be identical or to be different?

A. Assuming that there is a pattern of prices, and that it is possible to know the transportation costs to this

destination, it would seem that the bids would be identical, because they well know that if they bid a higher price than somebody else, they will not get the business.

Q. Now, if on such f.o.b. mill bids the destination cost to the Government of the different bidders were the same, would such identity raise to you, as an economist,
45556 an inference of collusion?

A. No.

Q. Under the conditions that have been assumed as prevailing on competitive bids, and assuming that the dealer business is the backbone of the cement business, would you expect a cement company to make a specially low price on a governmental invitation involving a large quantity of cement?

A. No. The Government bid is occasional and likely to be disruptive. The business is depending on its commercial dealers, and, therefore, probably would not make any different price to the Government.

Q. Now, assume that cement manufacturers have learned that buyers of cement, both public and private, ordinarily determine their purchases between competing sellers on the basis of costs to the buyer at destination, and that manufacturers with knowledge of that fact generally refuse to bid or quote f.o.b. mill without reference to the cost to the buyer at destination, is such a refusal explainable on economic grounds?

A. Yes, because of its disruptive character.

Q. Well, to you as an economist, does such refusal imply collusion or agreement?

A. No; individual self-restraint, acting in individual's self-interest, would probably explain it.

Q. Assume that cement is sold at delivered prices de-
termined by the use of multiple basing points, and
45557 that from past experience manufacturers have learned that a reduction in price by one manufacturer is immediately met by others, and that the manufacturer initiating the decline gets little or no increased volume, but does get a lower price for his product. Under conditions of free competition would you expect each manufacturer to make successively lower prices?

A. No; it would seem rather irrational for him to do that. What he would be doing would be simply to get a less total return for the product he produces.

Q. Well, under conditions of free competition, if you

would expect each manufacturer to make just one lower price as distinguished from successive lower prices, would that change your answer?

A. Would you state the question again?

Q. Under conditions of free competition, and under the assumptions in the last question, would you expect a manufacturer to make one lower price—a lower price in his market area once, in order to get additional business?

A. If he knew these facts under the assumed question, it would seem that he would not.

45558 Q. Would the ratio of profit to investment in an industry such as this be any indication of the existence of competition in that industry?

A. Well, I would say that it would be—

Mr. MacIntyre: I did not have an opportunity to object before we got the question out of the way. I do object to the question as calling for information dealing with irrelevant and immaterial matter. It is a question that can go to nothing other than the relation of profits, losses, costs, and the like, as evidence or lack of evidence 45559 of collusion, and as the Supreme Court of the United States in the Famous Oil case, of May 6, 1940, has held, such things are irrelevant and immaterial to issues concerning price fixing.

Trial Examiner Norwood: I do not think we have any definite information about this ratio of profit to investment; have we?

Mr. MacIntyre: Not in the record.

Mr. Withrow: As far as I know, there is nothing in the record. There was something once which Your Honor struck out, as I recall.

Trial Examiner Norwood: Objection sustained.

Mr. MacIntyre: I move that the witness' answer, so far as it has been made, before I have had an opportunity to object, be stricken.

Trial Examiner Norwood: Motion allowed.

Mr. Withrow: Your Honor, I offer to prove by this witness, had he been permitted to testify, the ratio of profits to investment in an industry such as the cement industry would be an indication, a strong indication, of the existence of competition in that industry.

Trial Examiner Norwood: Will you repeat that 45560 statement?

Mr. Withrow: And when I said "in such an in-

dustry," I was referring to the cement industry, as set forth in my long hypothetical question.

Trial Examiner Norwood: The testimony is rejected, and Counsel has his exception.

A. The significance of high overhead costs is that in order to keep down the costs per unit of product, it is necessary or desirable, at least it is necessary to operate the plant at about its optimum capacity. The costs per unit of product decline as the volume is greater.

By Mr. Withrow:

Q. Does the existence of high overhead cost in an industry have any effect upon the extent of the market area in which an individual producer solicits business?

45561 Q. I will ask you to answer that, in your opinion as an economist, not as a fact question, Professor.

A. Yes. He wants to have a large output in order to reduce his cost. Therefore, he must sell over a broader area. It is a struggle to enlarge his market.

Trial Examiner Norwood: Can you give us your idea of what is overhead cost?

The Witness: Well, it is relative.

Trial Examiner Norwood: In terms of proportion, as between costs and selling price.

45562 The Witness: Yes. Of course, it is relative. An industry might be such that of its total costs of operation a half or a third or some other such proportion might go to the payment of interest on capital and for other overhead costs.

Trial Examiner Norwood: How much would be "high"?

The Witness: Oh, that is relative. I do not think any particular figure could be given.

Trial Examiner Norwood: You have to determine it for each industry?

The Witness: Yes.

Trial Examiner Norwood: Individually?

The Witness: Yes.

By Mr. Withrow:

Q. I believe you mentioned the term "marginal output" in answer to the Examiner's question. What do you mean by the term "marginal output," Professor?

A. When a mill is running at any capacity whatsoever; say it is producing 10,000 units, and then it is asked to produce an extra unit, the extra unit is known as the

marginal one, the marginal product, or marginal output. It is the production of a unit more or a unit less which is marginal.

Q. Well, if the overhead costs of the plant are high would the cost of these marginal units be relatively more or less?

A. Less.

45563 Q. Would an economist expect a business man to sell marginal units at a lower net return than the earlier units produce but at a net return something above his out of pocket costs?

A. Yes, if a large proportion of the cost of production are for overhead he is quite willing to sell the product at the extra cost to produce the extra units provided he gets anything on his overhead.

Q. Now, is there any relation between this problem of high overhead cost and the problem of freight-absorbing sales?

A. Yes, very direct.

Q. What is this relation?

A. The mill which has high overhead costs, it is seeking a large market, trying to increase his total sales, and he does that by absorbing freight on distant sales.

Q. Now, Professor, if you found evidence of market leadership in an industry, does this indicate that there is collusion in that industry?

A. No.

Q. Is such market leadership consistent with the existence of competition?

A. Certainly.

Q. Is the cement industry one in which you would expect to find some measure of price leadership and market leadership?

A. I would expect it in an industry like this; so far as the hypothetical question went there was no out-
45564 standing large company but the price followed is of smaller ones, in many different groups.

Q. Professor, are there certain wastes in industry which an economist expects under free competition?

45566 A. Yes, there are many wastes under free competition.

By Mr. Withrow:

Q. Can you enumerate some of them for us, some of the more important ones?

A. Well, one is cross-hauling; another is excessive competitive advertising, multiplication of sales offices, the multiplication of plants.

Q. Now, would you consider this waste incident to cross-hauling more serious than these other economic wastes that are also incidental to free competition?

A. I have no factual knowledge as to the total amount of cross-hauling. Theoretically, I do not believe it is any worse than the other wastes of competitive—I see no reason for stipulating that one waste, at least.

Q. Well, would you say that all cases of freight absorption are cases of cross-hauling?

A. No. I can think of several exceptions where the sales are all made in one direction.

For instance, sales toward a port like New York, where there can't be a cross-hauling; sales which are made in one direction, one season of the year or one year and in the opposite direction the next year or the next season. Cross-hauling, as I understand it, has to be contemporary.

Q. Well, might this problem of cross-hauling arise in other industries than in the cement industry, as described in my long hypothetical question?

Mr. MacIntyre: That is objectionable on several different grounds.

Trial Examiner Norwood: I do not see any use for that.

Mr. Boyd: Will Mr. Wooden concede that it exists in a large number of industries?

Trial Examiner Norwood: Well, we have rejected evidence, I think, as to practices in other industries, factual, and this is not as good as that, is it, just as opinion about whether it might—

Mr. Boyd: Wouldn't it be of some significance that this is not essentially related to the basing point, or this particular industry, by itself, but is something that is quite universal and found throughout all types of industry?

Trial Examiner Norwood: Can you show that?

Mr. Boyd: If permitted.

Mr. Withrow: Your Honor will recall that when their experts were on the witness stand they went into great detail about some other industries, and certainly this economist can tell us, an economist recognizes a condition in

other industries, that it is nothing that they regard as being peculiar to the cement industry.

Trial Examiner Norwood: I think they did go
4356 into the matter in order to show some common features or to contrast conditions in the wheat market with conditions in the cement.

Mr. Wooden: That was to contradict the propaganda of the cement industry that they had put out to the effect that their method was similar to that in wheat.

Trial Examiner Norwood: I did not just recall how it was brought in.

Mr. Wooden: We certainly did not want to go into the question, and we protested always to going into the question whether there was a collusive cross-hauling, or collusive activity of any kind in the other industries. We cannot try all the other industries of the country.

Trial Examiner Norwood: I do not think this is competent with respect to this, because you prove this cross-hauling there, then you have to go to the trouble of proving that there is no collusion in those industries, and we are getting entirely out of the field of relevancy, and I think right here is the place to stop.

Mr. Withrow: I am not going to address myself to the question, but Counsel for the Respondents very graciously accepts the concession made by Mr. Wooden and Mr. MacIntyre that their testimony with reference to the wheat market and the comparison was solely to meet the propaganda of an advertisement of the Cement Institute.

4356 Mr. MacIntyre: I say it does that.

Mr. Wooden: It was admissible for that reason, but it is not confined to that use.

Trial Examiner Norwood: Well, I shall sustain the objection here, and I assure the Respondents that I will make fair application as far as I am concerned of the testimony about the wheat market.

Mr. Withrow: I offer to prove through this witness that if he were permitted to testify that there is nothing in the nature of cross-hauling which prevents its existence in other industries than the cement industry, and that it is a phenomenon which economists expect to arise in many industries of different types under a state of competition.

Trial Examiner Norwood: I think all the facts of that situation are already in the evidence, so I do not think we should go into it here.

Counsel has his exception.

By Mr. Withrow:

Q. Should cross-hauling disappear in this industry as described by me in my long hypothetical question without any governmental action to that extent, what would this indicate to you as an economist as a possible explanation?

A. I think it could only be done by collusion.

Q. Now, is the existence of cross-hauling in an 45570 industry such as described in the long hypothetical question in your opinion as an economist an indication of competition or collusion between the various producers?

A. The hypothetical question to my mind indicates a state of competition rather than of collusion. I got that—I have that belief because of the great number of mills broadly scattered, the high struggle for tonnage represented by freight-absorbing sales, it seems to me that the indications are for competition rather than collusion.

Q. So that this cross-hauling in that hypothetical question is one of the important factors in indicating competition and negativing collusion?

A. Yes.

Q. Professor, I am going to take up the subject of trucking, and I am going to ask you a number of hypothetical questions which are based on the same fundamental assumptions but with certain changes or additions which I want you to consider carefully. These questions will deal with the discontinuance of trucking by one company and its discontinuance by competing companies with the inauguration of contract trucking and with the use of a premium charge for truck delivery.

Now, the common assumptions in all of these questions on trucking are as follows:

Assume that the most important customers of a particular cement manufacturer are its dealers and that 45571 dealers in any one locality are in competition with each other in the retail distribution of cement;

Assume that cement is usually sold at delivered prices; that a cement manufacturer, upon request, sold cement for delivery to trucks at an f.o.b. mill price; that a few of its dealers took truck delivery of cement, and that such dealers, from time to time, invaded the normal market area of other dealers of this company, and that these local dealers complained to the company and threatened to discontinue doing business with it.

Assume that a few of its dealers were able, through trucking, to deliver the cement at a lower delivered cost than competing dealers in the same locality, and that the latter complained to the manufacturer.

Assume that the great majority of this manufacturer's dealers were strongly opposed to truck delivery and urged it to discontinue sales for truck delivery.

Assume that another important class of its customers were the railroads, that they were dissatisfied with the traffic they were losing from truck deliveries and urged this cement company to discontinue sales to trucks.

Assume that the company's mill was equipped to load cement in cars and that the cost of loading in trucks was usually greater than that of loading on cars, and further that loading on trucks had a tendency to cause labor
15572 dissatisfaction because of irregularity of shipping operations.

If, under these conditions, this manufacturer who had been making deliveries to trucks at an f.o.b. mill price changed his practice in any one of the following ways, i. e.:

1. By refusing to make such deliveries to buyers' trucks;

2. By refusing to make deliveries to buyers' trucks and in place thereof offered to make deliveries by trucks, either owned by him or by contract trucker, at the same delivered price as charged for deliveries by rail;

3. Continued to make deliveries to buyers' trucks but charged a differential for loading such trucks;

4. Continued to make deliveries to buyers' trucks but charged a price equal to the delivered price as quoted for rail delivery.

To you as an economist is such action consistent with individual action in the individual company's self-interest?

15574 A. Yes, I think that such action is consistent with individual action in individual self-interest. These are business practices, and each seller has his sales organization and his customers and patronage, and
15575 it is necessary for him to cultivate and perpetuate—

Trial Examiner Nonwood: Do you think under those assumptions, then, another vendor would feel the necessity, the economic necessity, of meeting the terms of the other mill with respect to this trucking?

The Witness: Yes.

By Mr. Withrow:

Q. Now, under the same assumptions as stated in the previous question, if this manufacturer after having changed to one of the four alternatives stated should thereafter change to another of said alternatives or revert to his original practice, to you as an economist is such action consistent with individual action in the individual company's self-interest?

A. Yes. It may simply mean that he has tried one and found it undesirable or not working as effectively as he thinks another will, and he tries that.

By Mr. Withrow:

Q. Now, under the same assumptions as stated in the original question on trucking, if the manufacturer
45576 is competing with the manufacturer who has adopted one of these practices, one of the alternative practices, should in turn adopt the same practice, would such action to you as an economist raise an inference of collusion?

A. If the manufacturer who had adopted this policy was gaining trade because he had adopted it, and the other man was losing trade because he had not, very obviously the man who had not adopted it would adopt it.

Q. So you would not raise an inference—

A. I would not raise an inference of collusion—simply the necessity of sales in the market.

Q. Now, if one of these competing manufacturers should thereafter again change its practice to one of the other alternatives stated in the original question on trucking, and thereafter the original competing manufacturers should adopt the same practice, will you state whether or not, as an economist, such action would raise an inference of collusion?

A. No, it would not, for the reasons given in the last question.

Q. Now, Professor, I am going to take up with you the subject of diversions of shipments in transit by the buyers, and I shall ask you a number of questions based on the same general set of assumptions with certain addition, to which I shall direct your attention specifically.

The common assumptions in all these questions
45577 on diversions are as follows:

Assume that a cement manufacturer usually sells

his cement at delivered prices; that the great majority of his sales are to dealers; that a number of competitors are actively soliciting the purchasers of each dealer in the territory in which this company does business; that dealer good will is a valuable asset to this manufacturer.

And assume that this manufacturer sells in town "A" at a delivered price of $2 per barrel, on which sale he nets, after deducting the freight rate, $1.50 per barrel.

And assume that this manufacturer sells in town "B" at a delivered price of $2 per barrel, from which he nets $1.20 per barrel at his mill.

And assume that in each case the dealer pays to the railroad the amount of freight and remits the balance to the manufacturer.

And assume that a dealer in town "B" orders cement to be shipped to that town, and after the cement is delivered to the railroad the dealer diverts the shipment in transit to town "A," paying the railroad the 50 cents freight due for a shipment from the mill to town "A" and remitting to the manufacturer the $1.20 per barrel, which was the mill net to the manufacturer on a shipment to town "B," so that this town "B" dealer now has this cement in town "A" at a cost of $1.70 to him.

4578 Assume that this town "B" dealer now sells this $1.70 cement in competition with the manufacturer's customers in town "A" whose cement is costing $2.

And assume that the manufacturer's local dealers in town "A" complain to the manufacturer and in some instances threaten to discontinue doing business with him and the manufacturer adopts a policy of preventing such diversions.

If under the circumstances would you as an economist say this action is or is not consistent with individual action in the individual company's self-interest?

4579. A. If a manufacturer under these conditions does adopt a policy of preventing diversions, it seems to me consistent with individual action in individual self-interest.

By Mr. Withrow:

Q. Now, making the same assumptions as contained in the last question on diversions, and adding the following assumption, to wit: That one individual manufacturer

discontinued allowing dealers to divert cement, now if other manufacturers discontinued permitting diversions in transit; would you, as an economist, tell us whether or not this raises an inference of collusion?

A. No, rather following a pattern.

Q. If some manufacturers took steps to prevent such diversion and others did not, what, in your opinion as an economist, would happen to the dealer business of those that did not?

45580 A. Well, the one that did not would lose business to those who did.

By Mr. Withrow:

Q. Does the fact that for more than 20 years cement manufacturers have generally attempted to prevent such diversions indicate to you as an economist the existence of collusion, or is it equally consistent with the existence of competition?

A. I see no implication of collusion. It could as well be explained on the basis of individual action in individual self-interest.

Q. Assume that in the cement industry a large majority of the cement is sold to dealers, so that the dealers as a class have been characterized as the backbone of the industry;

And assume that some manufacturer offered to dealers some marketing practice that would seem to dealers more advantageous to them than the practice formerly followed by this manufacturer or by his competitors,—such as more favorable discount, or a classification of business that gave the dealer a larger proportion of the manufacturer's business than other manufacturers were giving him.

Can you state what would be the economic result to another manufacturer, who did not change his practice so as to give at least equal advantage to his dealers?

45581 A. He would lose his dealers, and also lose his sales.

By Mr. Withrow:

Q. Now, if under those circumstances, Professor, you found that one manufacturer initiated this change and you found that the manufacturers who sold in the same marketing area had made a similar change in their marketing practices, would you infer from that the existence of collusion, or is that consistent with competition?

A. There is no inference of collusion. It is also consistent with competition.

Q. Is there any economic necessity that all such trade practices should be uniform?

A. The tendency is for trade practices to become uniform. It is possible that, in certain instances different manufacturers will be able to substitute for one type of customer favor another type of equal value to the customer.

Q. Well, assuming that marketing practices, such as discounts, classification of business involving sales to dealers and sales direct to consumers, and things of that type, are uniform as between competing manufacturers, would such uniformity, to you as an economist, raise an inference of collusion?

A. No.

Q. Now, suppose you had a case where a base price at one figure were in effect on one side of a State line and a different base price in effect immediately on the other side of the State line and both of those base prices being put into effect by one base mill, and recognized and observed and followed by its competitors. What competitive theory exists on which that could be explained?

A. Well, I can see that if in one State a mill had adopted one price pattern on one base, and in another State another mill had adopted a price pattern on another base, that a competitor from the outside trying to sell in those two territories would have to conform to the prices he found there, and, therefore, one would find on one side the use of one base, and on the other side the use of another base.

Q. Well, I am not sure you understood my question, Professor. In this question we apparently have two base figures, one in one State and another in another State, and in mill. What competitive theory exists on which that could be explained, or is that consistent with competition?

A. Yes; it is consistent with competition, and it is simply a price pattern prevailing in one State and another price pattern prevailing in another State.

Q. Would you agree that a pattern such as that would demonstrate that there was an understanding of some sort in that industry that a leader was to be followed with respect to price in a certain area? Do you agree with that?

A. Yes; there is a pattern there, and it is followed, or is being followed in that industry.

Mr. Withrow: Will you read the question, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. No; there need not be any understanding.

By Mr. Withrow:

Q. Is it consistent with competition?

A. It is consistent with competition.

Q. Assume that over a long period of time the base figures at two separate basing points were to remain at a constant differential, would you consider this to be a rigidity which would be wholly inconsistent with the existence of active, genuine price competition?

A. No—simply that if one base is changed, the other must be changed to make sales in the area.

Q. Do you think, Professor, that the method of sale as described by Mr. Wooden in his long hypothetical question has a greater or less tendency to promote price rigidity than the method of selling at uniform f.o.b. mill prices?

A. I do not believe that the system described in the hypothetical question makes for price rigidity, any
45584 more than a uniform f.o.b. mill plan of selling would.

Q. Now, is there any relation between the ability to regulate production to demand and the problem of price rigidity?

A. Yes. If you have a large scale production, a manufacturer tries to ration his market, and is able to do so.

Q. Professor, how does that contrast with agriculture?

A. In agriculture, where they have so many sellers, they produce in one season—start the production in one season, and they are unable to stop that production and to ration it according to the market demand. It is produced, and must be sold. The farmers, through their cooperative methods, have tried to do such rationing, but that is through cooperation.

Q. What does an economist mean by the words "in elasticity of demand"?

A. Well, demand should be defined as the amount of goods which will be taken at any and all prices, and if that amount which will be taken in a series of prices changes very much when the price changes, we say that the demand is elastic; but if the response of the quantity demand to the price change is slight, we say that demand is inelastic.

Q. Now, if demand for a product is relatively inelastic, does this have any effect on the problem of price rigidity?

A. Yes; it has some relation to price rigidity.

Q. For what reason, Professor?

A. Well, if the demand is highly inelastic, any
45585 change of price has little effect upon the total amount which they are able to sell. In consequence, there is less reason for changing the price. If they could reduce the price and enlarge their total sales, there would be greater reason for changing the price.

Q. Assume that cement is always used in connection with other products, and is a relatively minor part of the total cost of the completed project. Would such a fact have any significance in connection with the inelasticity of demand?

45587 A. Well, if the cement that goes into a project is only a small part of the total cost of the project, that would make for inelasticity of demand, because, no matter what the price of cement were, within limits, it would not increase the sale of cement.

Trial Examiner Norwood: It would not affect the quantity?

45588 The Witness: Yes; the quantity sold.

By Mr. Withrow:

Q. Do you consider that a rigid price, in and of itself, indicates to an economist the presence of monopoly?

A. No. It is explained on many grounds that are not monopolistic.

Q. Assuming, in answer to the long hypothetical question of the defense, as I believe you testified, that the industry described there was an industry which represented imperfect competition, would you say that price rigidity under that circumstance of imperfect competition necessarily indicates the absence of competition?

A. No.

Q. Does price rigidity, in itself, indicate collusion or agreement?

A. No.

Q. Would the existence in the industry of a custom of having contracts with price guarantees have any effect on price rigidity?

A. It would tend to make it more rigid.

Q. Assuming that in the cement business most companies have outstanding large obligations on specific job contracts, and that all of these contracts contain a clause giving the buyer the benefit of the decline in price, so that if

the manufacturer's commercial market price at point of delivery declines, and they are forced to reduce the price on contracts for cement that they have agreed to deliver for a long period ahead. Would that factor have any influence, to your mind, on a tendency towards rigidity in price?

A. This practice would tend to make prices more rigid, because it would make the sellers hesitate to change the price.

45590 By Mr. Withrow:

Q. Now, assume that the cement manufacturers, or some of them, have on their books contracts for delivery in the future, over a period of a year or more, large quantities of cement, the contract stipulating a maximum price, so that in the event of an increase in the commercial price the manufacturers do not get any advantage at all on that increased price on their contract obligations.

Would that, in turn, have any influence on the question of rigidity of price?

A. Yes; again, because it makes them the more hesitant to change their price.

Q. Assume that in the event of a price advance, it is the custom of the industry to give several days' notice, broadcasting to their trade the effective date of such price advance, and that coupled with that it is also the custom to permit dealers to place orders within that term for all the cement for which they will take delivery within 15 days thereafter. Would those factors have any influence upon the question of price rigidity?

A. Yes. Again, they would hesitate to change the price.

Q. Assume further that it is the custom in the industry to protect the dealer on price decline on cement recently purchased, either in transit or just received, so that on such declines substantial credits have to be given on all
45591 recent shipments. Would this have any effect on rigidity of price?

A. Yes; because of the chance of less earnings and less sales, and therefore the greater hesitancy.

Trial Examiner Norwood: It would discourage changes?

The Witness: Yes, sir.

45592 Q. Assume, Professor, that the results of price reductions at certain times in prior years, as during a price war, have shown that a price reduction by one pro-

duced may not only be met by competitors but they in turn might quote a still lower price, would this have an effect on rigidity of price?

A. Yes, it would make it more rigid.

Q. Now, assuming the same conditions as to the industry as are contained in my long hypothetical question, and assume that during the period subsequent to 1933 the price of cement remained unchanged for a period of, say, five years, does that fact of rigidity of price to you as an economist raise an inference of collusion?

45593 A. No. This would not create an inference of collusion. In fact, if there were collusion I would surmise that the people who are colluding would not be interested in having a fixed price for five years but would be experimenting with other prices.

By Mr. Withrow:

Q. Now, assume that certain companies have each a number of mills, and that the territory in which each mill sells reaches to and contacts the territory in which another mill owned by the same company sells, and that a company operating such a series of mills has found it necessary to change its price base at each or several of its mills if the price of any one mill is to be reduced, would this tend to have an effect on rigidity of price?

A. Why, yes. It extends the area of sales and volume of sales; therefore, would incline them to be more careful in making change of price. It would promote the rigidity of price.

Q. Now, will you state whether or not the fact that prices are known to all competitors tends to create rigidity of price?

A. Yes. They know that whatever change they
45594 make will be known to others, and the others will very likely meet them, or have to meet them, so that there is less inclination to make changes, more care in making changes; therefore, greater rigidity in price.

Q. Now, the record in this case, I believe, or there is testimony to the effect that the price of agricultural products, notably wheat, in general, are less rigid than the price of a manufactured commodity like cement. Would you as an economist explain to us the economic factors or causes underlying this difference in rigidity?

A. Well, in the case of a manufactured product, or, I

mean, of agricultural products produced by thousands, if not millions of producers, it is impossible for them to ration the market. It is necessary for them to throw what production they have onto the market; if they make a sale at all they have to take what price prevailed. As a consequence, this price is very likely to fluctuate very much, especially against an inelastic demand. In the case of manufactured products on the other hand this possibility of stopping production, or not increasing production, the possibility of rationing the market, holding products back, tends to make for its rigidity.

Q. Where, in your opinion, Professor, do the forces of competition converge in an industry such as described in my long hypothetical question?

A. They converge on the market. The market in
45595 this case is at the delivery points; that is, if you are quoting delivered prices.

Q. If there is testimony in this record to the effect that under the basing-point system that forces of competition converge in the long run upon the mill, would that have any effect upon the testimony you have just given?

A. No.

Q. Do you consider that a method of pricing, such as described in my long hypothetical question, has to be policed by the industry in order to be maintained?

A. I think that there are forces sufficient to have the general method of marketing and pricing carried out without policing. I assume that policing in this case refers to cooperative action. If it means simply individual action, that is, that a producer having set up a policy wants to see that it is executed, carried through, of course it is necessary.

Q. But you would not think that any joint action was necessary?

A. No joint action would be necessary to carry out that policy of a particular producer.

Q. And would you say that the method of pricing described in my long hypothetical question was an artificial system of pricing?

A. I do not know why that adjective "artificial"
45596 would be applied to it. It seems a natural evolution, as I have previously said.

Q. If it should appear in this record that less than 50 percent of the sales of a number of base-point mills re-

maintained at their own base-point prices, and that the remainder of their sales were made at lower mill nets, some of them as much as 60 or 70 cents a barrel lower than their own base-point prices, what, if anything, would that indicate to you as an economist as to the average level of such base-point prices?

A. I do not think it has any necessary relation. The mill is a large scale operation, it is in large scale and operating on a large scale basis. Its overhead costs are very high, and it is seeking sales at a distance in order to operate at a large scale.

Trial Examiner Norwood: Do you see anything indicated there as to the volume; that is, less than 50 percent refers to the number of shipments, doesn't it?

Mr. Withrow: Of sales; that is right.

Trial Examiner Norwood: Number of sales; nothing said about the volume, is there?

The Witness: I assumed in answering that that referred to volume of sales, sir.

By Mr. Withrow:

Q. Would it have made any difference in your answer if that 50 percent referred to volume or number?

45597 A. I do not think it would. No, it would not.

Q. In your opinion, Doctor, can the basing-point system exist or be maintained as the result of competitive forces operating independently of each other?

A. Yes, it can be.

Q. In your opinion, can the basing-point system exist or be maintained as an expression of the economic law of supply and demand?

A. Certainly.

Q. Professor, in your opinion as an economist would the economic laws or concepts of supply and demand find as full expression under delivered prices as under f.o.b. mill prices?

A. Yes.

Q. In your opinion, can the basing-point system exist or be maintained without some form of cooperation among competitors?

A. Yes. It is not dependent upon cooperation. It can be as well dependent upon individual action under self-interest.

Q. When the territory of a base point mill is invaded by an outside competitor does this, in your opinion as an

economist, indicate that the base-point mill is behaving like a conspirator?

4559 A. Quite the contrary. If it is invaded by an outside competitor it must mean that some of the product of the outside competito, is being offered in its territory at a price, and this base mill must meet that price or not sell. Meeting of the price would not be a conspiracy at all. It would be action, individual action, in individual self interest; nothing more.

By Mr. Withrow:

Q. Well, in an industry such as described in my long hypothetical question, would you expect such invasion of a base point mill's territory by mills outside?

A. Yes, the full set-up is for freight absorbing sales, and that means invasion of one another's territory.

Q. If the statement were made to you that the public interest is best protected by the long-established practice of meeting competition in the sale of cement, what would be your reaction as an economist to such a proposition?

4560 A. I feel that meeting competition is the best protection in the public interest.

Trial Examiner Norwood: What do you mean by meeting competition?

The Witness: Meeting the price of the competitor.

Trial Examiner Norwood: And not selling below it? Do you mean making exactly the same price? Is that what you are referring to as "meeting competition"?

The Witness: I do not understand competition to 4561 necessitate going below the other price, but that is part of it.

Trial Examiner Norwood: What do you mean by that expression in your answer?

The Witness: I meant simply—

Trial Examiner Norwood: Making the price the same as the competing price; is that right?

The Witness: Yes.

Trial Examiner Norwood: Go ahead.

By Mr. Withrow:

Q. Could you expand just a little bit, Professor, and tell us your reasons why you feel that the practice of meeting competition is in the public interest?

A. Well, meeting competition is, as I see it, just a

method of stating that there is competition, and I believe that there is a presumption among economists that competition is best for the public interest.

Trial Examiner Norwood: Why do you think competition is best for the public interest?

The Witness: Among other things it tends to keep the price down near the cost of production, and tends to assure to industry earnings that are normal to the industry, and therefore perpetuate the industry.

By Mr. Withrow:

45682 Q. Would you agree with the statement, Professor, to the effect that if base-point prices have been in effect without change from January, 1933, to 1938, that such rigid prices would be taken by an economist as indicating a lack of normal or usual competitive forces at work?

45683 A. I think that economists would not understand the fact that prices had been constant for this period meant that there was collusion.

By Mr. Withrow:

Q. The question was "usual competitive forces at work" in this industry.

A. Economists would say that usual competitive forces might be working.

Q. And you, for one, would take that position?

A. I would take that position; yes.

45684 Q. Would you consider, Professor, that if prices were raised 40 cents per barrel in July, 1932, in the depth of the depression, that would be an extraordinary phenomenon, irrespective of the fact that previous prices were abnormally low?

A. No. If prices had been abnormally low, at the bottom of the depression, it is necessary for prices to rise from the bottom—that is the only direction in which they can move, and must start some time there. There may have been outside forces to start them up in July, 1932.

I might also say that in the summer of 1932 it marked the bottom of the depression throughout the world, even throughout the United States, but for the fact that we had a bad banking system, and we had a set back, and there was a second bottom, a worse bottom, in about the first of March, 1933.

45605 Q. Well, would such a rise in your opinion as an economist, be consistent with natural competitive forces?

A. Yes; entirely.

Q. Professor, under a uniform f.o.b. mill price method of selling, what would be the effect on the market area within which each mill could sell?

A. I surmise that if a uniform f.o.b. were adopted, the sales territories of some mills would be contracted, and others, possibly, be enlarged. There is no way of surely determining it. The sales territory would be reduced by the cessation of absorbing freight, but in the first part of that I was answering what we would call the natural territory, where they had a freight advantage.

45606 Q. Now, what would be the effect of such a method of marketing on price, Professor, in your opinion as an economist?

A. The effect on price if the uniform f.o.b. mill system were universally adopted? I feel that if the level were higher or lower, it would be higher.

45607 Q. Professor, what would be the effect on price during any transition period between delivered prices and flat f.o.b. prices?

A. Utter confusion.

A. At the time of transition there would surely be confusion.

By Mr. Withrow:

Q. And what effect would it have on the market areas of some mills in the transition period?

A. The market areas of some mills would be contracted, and the market areas of possibly some others would be no; none would be enlarged. These narrower regions would probably make for instability, and the price fluctuations would be more common.

45608 Q. If demand in a given area varied a great deal, so that it sometimes was less than the local territory could supply, and at other times it would be greater, what effect, if any, would that have on prices, in your opinion?

A. I meant to include that in my last remark. If the area was smaller, the demand would fluctuate more radically than if it was possible to have a broader territory, where the demand could be more equalized.

Q. Assume that all mills are selling on a basis of uniform mill net or uniform f.o.b. mill price, and that there is

a big demand in a particular mill's market territory due to a large Government project, and assume that that mill, after reserving a sufficient proportion of capacity to take care fully of its commercial customers, is able to supply only a portion of the cement for the Government project, and assume that the balance of the amount required for the Government project has to be secured from a more distant mill, what would be the effect on the total cost of the project to the Government, in your opinion as an economist?

Mr. MacIntyre: That is objected to on the additional ground that it is vague, indefinite, and so incomplete as to set forth assumptions that, if an answer were to be given to it, it would not aid anyone in this investigation at all—what levels of prices prevail under one system as against the other. It seems to me that no witness—in fact,
45609 the question is impossible of answer without knowing those things. I object to it, because any answer that we would get would only encumber the record and be worthless.

Mr. MacIntyre: An additional objection is that it does not call for an expression of opinion on economic theory, but is rather one of mathematics. If you did know what the price levels were, then you could tell whether or not, under one as against the other, the price would be higher or lower, but you have to have all the factors even for a mathematician to answer; anyone else would have to have them. It is simply a question for a mathematician or a layman who knows something about mathematics, rather than one calling for an expression of economic theory.

45610 Trial Examiner Norwood: I think that would be too speculative.

Mr. MacIntyre: It certainly is, in my opinion.

Trial Examiner Norwood: I sustain the objection.

Mr. Withrow: I offer to prove through this witness, if he were permitted to testify, that under the assumptions contained in the question, in his opinion, the total cost to the Government would be raised by virtue of the fact that
45611 selling was carried on under that uniform f.o.b. mill system, because on a basing-point system competitors would quote as low a price as the producer in whose natural market area the Government project was located, which would mean that they would meet the lowest quotation, and if they were all quoting uniform f.o.b. mill

prices the portion required from a more distant mill would be priced at the uniform mill price, plus freight from the more distant mill, which means higher cost to the Government.

45612 Trial Examiner Norwood: The testimony is rejected, and Counsel has his exception.

By Mr. Withrow:

Q. Would such a uniform f.o.b. mill method of selling have any tendency to affect the total mill capacity in different areas?

A. Well, with the mills that exist, of course, at the time of change there would be no change in their capacity, but some of these mills with a contracted territory could not make full use of their physical capacity; other mills whose natural territory would be enlarged might expand their output a bit.

45613 Q. Would you tell us whether or not the change from the basing-point method, as described in my long hypothetical question to such a uniform f.o.b. mill system would tend to have any effect on the total capacity of all of the mills in the country?

A. To reach the whole country at as low price, it would now require a great multiplication of the number of mills, which would mean that the size of the mills would be smaller and the cost of production, therefore, relatively higher.

Trial Examiner Norwood: Do you mean by uniform f.o.b. mill if the same price, just one price at the mill—

The Witness: To all buyers.

Trial Examiner Norwood: That is what it means.

By Mr. Withrow:

45614 Q. Now, assume, Professor, that each cement producer is required to sell within the territory immediately surrounding his mill at a uniform f.o.b. mill price, the extent of such territory being determined by the relation of such mill price to the mill prices of surrounding mills; and that in addition each producer has the right to make occasional and sporadic sales on the basis of lower mill nets by the use of so-called freight absorption, that such freight-absorbing sales cannot be systematic and constant, what effect would this have on his sales to dealers in the area within which he can only sell by such freight absorption?

A. It would cause a great deal of confusion, dissatisfied dealers. I surmise the loss of dealers and loss of patronage loss of sales would result.

Q. In your opinion as an economist, would it be possible for a seller under the hypothesis just stated to develop a dealer organization in a freight-absorbing territory?

A. Impossible.

45615 Q. What effect, if any, would the type of set-up contained in the long assumptions you made just a minute ago have on a manufacturer's ability to secure orders from persons other than dealers in such more distant territory?

A. They would have to employ a special set of salesmen or solicitors to take care of that sort of customer, and surely would add to the expense of operation.

Q. Now, would the producer making such sales in this freight-absorbing or distant territory have any standard by which he could determine whether his sales were or were not within the limitations set forth in the hypothesis a few minutes ago, the limitations being that each producer has the right to make occasional and sporadic sales on the basis of lower mill nets by the use of so-called freight absorption?

A. It would be very difficult for him to know whether he was within his bounds, seasonally or quantitatively, or by the other measures.

Q. Now, under the circumstances set forth in 45616 our last basic assumption about this uniform f.o.b. mill sales and sporadic freight-absorbing sales, would it appear to you that the making of such freight-absorbing sales constantly and systematically is any more indicative of collusion than the making of such sales occasionally and sporadically?

A. No. I think that the making of sales according to a common pattern, without collusion or without any inference of collusion or conspiracy—I do not believe that the making of them occasionally would be any evidence of conspiracy or collusion, either.

Q. Do you consider that selling upon the basis of non-uniform mill, as outlined in that hypothetical question, would tend to create a more or less competitive situation than that which was described to you in the defense long hypothetical question which purported to describe the present method of marketing in this industry?

A. I do not believe that it would be more competitive.
Q. Well, would it be less competitive?
A. I do not believe it would be less competitive.

By Mr. Withrow:

Q. Well, would such a method of marketing, that
45617 is, on this f.o.b. mill sale method with sporadic deviations, would such a method of marketing eliminate cross-hauling?

A. No, to the degree that freight-absorbing sales were allowed there would be cross-hauling.

Q. Well, would such a method of marketing, in your opinion as an economist, be more in the public interest than the present method of marketing, as described in the defense long hypothetical question?

A. I do not see that it would be more in the public interest.

By Mr. Withrow:

Q. Now, Professor, let us assume another method of marketing under which the buyer would be given the option of buying on delivered price or buying on the f.o.b. mill price if he desired, under such a method of marketing would you as an economist expect the buyer to examine his option?

A. Yes, to find out which would be the more advantageous.

Q. And what things would you expect him to examine or compare?

A. Well, he would be interested in the laid-down destination price, in the total cost at destination; he would be interested in the matter of services and size of purchase which he would have to make, delivery schedules.

45618 Q. Now, would you as an economist expect a purchaser to exercise his option to buy f.o.b. mill if it resulted in a higher delivered cost to him?

A. No.

Q. Assume that to some destinations the trucking costs from the mill are higher than the railroad freight rate, what effect would this have on the optional method, as far as such destinations are concerned?

A. He would not use the trucks, would use the railroad.

Q. Now, what would be the effect of such an optional method of marketing as you conceive it on the general marketing set-up?

A. Well, it would cause, probably cause, a great deal of dealer dissatisfaction, because some of the dealers would have trucking facilities, others would not, and it would therefore be very disturbing to the dealer's set-up, probably he would lose some of his customers.

Q. What would the ultimate result be, Professor, in your opinion as an economist?

45619 A. Of allowing both, of allowing this option of destination prices and f.o.b. mill.

By Mr. Withrow:

Q. Yes?

A. I would expect that this dealer dissatisfaction would lead them to abandoning the use of the f.o.b. quotations.

Trial Examiner Norwood: You think the dealers would drive them to it, do you?

The Witness: Yes.

Proceed.

Mr. Withrow: In view of Your Honor's rule at page 45486, concerning the matter of reading questions and answers, questions propounded to the Commission's experts, and the answers given, and asking the witness his opinion on that question and answer, I have not

45620 followed that procedure, and I would like to offer to prove at this time that this witness would testify, if permitted by Your Honor, to a disagreement with the testimony of Professors Fetter and Viner to the same effect, and to the same extent as now appears in the record in the testimony of Professors Griffin, Vaile, and Fairchild.

*Cross-Examination by Mr. MacIntyre.*

Q. Professor, in your statement of your qualifications there appears a showing of a list of writings for which you state you are responsible; do you recall?

A. Yes, sir.

Q. Now, will you please tell us what writings in marketing you have published other than an article or so which you contributed to the work entitled "American Business Practice," and a book on "The Middleman in English Trade," was it?

A. English Business.

Q. Will you please tell us any additional market writings that you have published; that is, in addition to those that did not confine themselves to money, banking and finance?

A. I wrote a book on "Early American Auctions."

45624 Q. "Early American Auctions"?

A. Yes.

Q. Any others?

A. I was joint author of this book on "Consumer Credit and Its Uses in America."

Q. Didn't that deal with consumer credit as an effect on business cycles or depressions?

A. No, not at all. May I say that the sections of the book which I wrote myself had nothing to do with that.

Q. Did any of the sections for which you are responsible deal with marketing of industrial products by manufacturers in this country?

A. The financing of products of American manufacturers is a part of marketing. Marketing has a series of functions. Every textbook on marketing, practically, starts out that way, and one of the groups, many, many chapters, devoted to the financing of products.

Q. But that for which you are responsible in that particular work dealt with financing; is that correct?

A. That is right.

Q. As contrasted with pricing policies?

A. No. It is part of it; pricing policies of a manufacturer of manufacturers.

Q. Yes.

A. That is part of the subject, that branch of

45625 marketing which you spoke of as the financing of product.

Q. Did it deal in any wise with pricing policies as affected by competition in the form of price quotations by others?

A. Well, they were comparing sales terms in industries and the costs of financing to the consumer of these different methods of quotations.

Q. It dealt with those things from the financing viewpoint solely; is that correct?

A. Well, the whole book is written from the consumer's angle.

Q. But from a financing viewpoint?

A. Yes, sir.

Q. Now, will you please tell us what parts, chapters or other portions of the work entitled "American Business Practice" that you wrote?

A. I think the section of the book that I wrote there is called "Money and Currency," as I remember it. I do not remember the title, exactly. It has been a great many years ago.

Q. "Money and Currency"?

A. I think so.

Q. You did not write any other parts?

A. No.

Q. Did you?

A. No, I did not.

Q. Did you review all parts of that work as written by other contributors?

45623 A. Did I review,—read it, you mean?

Q. Review it before publication?

A. I was not in any sense responsible for it.

Q. You did not review it before publication?

A. No.

Q. Did you read it before publication?

A. Yes, I did.

Q. The entire works?

A. Yes. That is, this volume I did. It is published in four volumes, as I remember it, and I read that.

Q. All four volumes?

A. Yes.

Q. Before publication?

A. Yes.

Q. And you did not raise any criticism with the editors-in-chief for the publication of any part of it?

A. No, I did not. I was engaged by this Ronald Press Company to write that section of the book. I had no responsibility for the other portions of the book.

Q. Now, can you name anything else that you have written that deals with pricing policies from a competitive viewpoint?

A. No, I do not.

Q. What firsthand investigation have you made, Professor, of a study of that nature that you have made of basing-point practices in American business, American industry?

45624 Mr. Withrow: Your Honor, I object to the question. The witness was not tendered as a factual witness. I do not think the Commission should go into the factual side at all.

Trial Examiner Norwood: The objection is overruled.

A. As I have remarked, I was one of the economists who helped with the first Cement case, and made investigations there.

By Mr. MacIntyre:

Q. Did you make any first hand investigation of facts in the industry, or did you in that case concern yourself with the theory, the economic theory, that you felt applied to the assumed state of facts in the industry?

Mr. Withrow: The same objection, Your Honor.

Trial Examiner Norwood: Overruled.

A. I worked on both features. It has been a great while ago, and I have forgotten many of the things that we did. I remember making almost innumerable trips to New York to consult with business men, trade association executives, and publication houses on price data. One of the problems that we had was—that I had, was to account for the fact of stability of prices of commodities other than cement for stretches of time, to discover whether it was due to competitive forces or monopolistic forces, or what not. Then I was given problems of economic theory from time to time, which were resolved. I was working with Professor Adams and Professor Fisher. They were
45625 in control of this general work for the defense in this case.

By Mr. MacIntyre:

Q. In that connection, when you made these visits to New York to discuss those matters, you discussed them with Mr. F. M. Coogan, of the Alpha Portland Cement Company?

A. I do not remember a single person. I could not answer your question as to the names.

Q. Do you recall Mr. John R. Morron as one with whom you discussed it?

A. No, I do not.

Mr. Withrow: Your Honor, I object to this entire line of questions. It goes away beyond the qualifications of this witness. If Counsel will make the witness a factual witness, that is one thing, but this is going beyond the

qualifications of the witness; it is not proper examination with reference to qualifications.

Trial Examiner Norwood: He is testing him in regard to his interest and bringing out all of the circumstances. I do not know how profitable those matters are, but certainly he has a right to do that.

Go ahead.

By Mr. MacIntyre:

Q. Did you discuss those matters with Mr. Archibald Cox, who headed the defense of the cement industry in that case?

45626 A. I never talked with any of the lawyers, the legal firm that was supporting it. I had only to deal on the one side with Professor Adams and Professor Fisher, and the other people in the trade that I mentioned before.

Q. You let Professor Adams talk directly with the attorneys, and then you talked with him; is that correct?

A. Probably that is the way it was.

Q. And also in that connection you talked matters over with Professor Fairchild, who has already testified in this case?

A. No; we never had a conference—this group of economists who were working. To my knowledge we never had a conference to discuss common problems.

Q. You never discussed those problems at that time with Professor Fairchild?

A. Never. The only persons I—the only economists I discussed any of these problems with were Professor Fisher and Professor Adams, and those always severally; that is, person by person.

Q. And you knew at that time, of course, that Professor T. S. Adams had been employed by the cement manufacturers, some of whom are involved in this case at this time?

Mr. Withrow: Your Honor, I object to trying to get into the record facts which are asked for in that question. I do not think the question is a proper question, and it would not bring out any information that would bear on the qualifications of this witness.

Trial Examiner Norwood: Overruled.

45627 A. So far as I knew, Professor Adams and Professor Fisher were engaged by the legal firm who

were defending the cement interests, and that is all I knew about it.

By Mr. MacIntyre:

Q. How much work did you do, as to period of time, that you had on that case at that time?

Mr. Withrow: I object to the question. It has no bearing on this witness' qualifications whatsoever.

Trial Examiner Norwood: Overruled.

A. I think that, to the best of my memory, my services began in 1922, and they were very spasmodic during the next year or year and a half.

45629 Q. When were you retained by Counsel for the Respondents to testify and to work with them in this case?

A. I think the first correspondence was in the winter of 1937-1938.

Q. Something like three years ago?

A. Approximately.

Q. I understand that the first contact was made by correspondence with you on the question?

A. Yes, sir.

Q. Did you discuss this employment and retainer with other economists who have already testified in this case?

A. At that time?

Q. At or about that time, or since?

A. No; I never discussed the matter of employ-
45630 ment with anyone else than the firm itself.

Q. Did you have any discussion at all with other economists on the questions about which you have testified here, after you knew or had reason to believe that you were employed, for the purpose of preparing yourself for testifying here?

A. Yes; there was a conference called in, I believe, April, 1938, in New York.

Q. Where was that held?

A. At the Biltmore Hotel. I think it was the Biltmore.

Q. You attended that?

A. I did; yes.

45631 Q. I ask you, Professor, for the names of the other persons who were present at this conference that your attended in April, 1938, at the Biltmore Hotel in New York?

A. Well, Mr. Bond, Mr. Porter, Professor Clark, of Columbia University—

By Mr. MacIntyre:

Q. That is Professor J. M. Clark?

A. Professor J. M. Clark, yes; Professor Burns—

45632 Q. Arthur R. Burns, of Columbia?

A. It is Arthur. I have forgotten the next initial. I think it is spelt Burns, B-u-r-n-s—Professor Fairchild, Professor Vaile, Professor Griffin; Professor deChazeau of the University of Virginia.

Q. Dr. Friday?

A. Dr. Friday, and Professor Cunningham—

Q. Any others?

A. I don't think of any more.

Q. Now, at that conference you discussed problems which have been involved in the testimony that you have given here; is that correct?

Mr. Withrow: The same objection, Your Honor.

Trial Examiner Norwood: Objection overruled.

A. The general subject of basing points and the cement industry were discussed; yes.

By Mr. MacIntyre:

Q. And definitions of different economic terms, such as "price," "market"—

A. Yes.

Q. —"competition"?

A. Yes.

Q. "Imperfect competition"?

A. Yes.

Q. And other terms that you used in your testi-

45633 mony here, such as "basing point," "basing-point system"—

A. Yes; a general conference.

Q. Have you written since this conference of April, 1938, memoranda on problems about which you have testified here, and submitted the same to Counsel for Respondents, or others?

45634 A. A series of questions were submitted to me for answers. I prepared answers to those questions.

By Mr. MacIntyre:

Q. They were submitted to you by Counsel for Respondents?

Mr. Withrow: The same objection.

Trial Examiner Norwood: Overruled.

A. Yes, sir.

By Mr. MacIntyre.

Q. You submitted your answers in writing to them?

Mr. Withrow: The same objection.

A. Yes.

Q. And you have, since the date you first submitted them to Counsel for the Respondent, re-read those answers?

Mr. Withrow: The same objection.

Q. (Continuing.) And studied them?

Trial Examiner Norwood: Overruled.

Mr. MacIntyre: Please read the question.

(Question read.)

A. Yes; I have re-read them.

By Mr. MacIntyre:

Q. Have you made any change at all in any of them since you first wrote them down?

A. Very minor ones—phraseology and clarification, a difference of view when I analyzed them more fully,
45635 of something of that order.

45636 Q. Have you read any of the economic testimony given in this case?

A. I read the testimony of Professors Viner, Fetter, and Hibbard, and some sections of the testimony given by the people of the trade—by people of the cement industry.

45637 Q. Have you read any of the testimony given here by Dr. Griffin?

A. Yes, I read most of Dr. Griffin's testimony.

Q. Have you read Dr. Fairchild's testimony?

A. No, I have not. I broke my eyes down reading Professor Griffin's testimony and haven't read since for 10 days.

Q. I judge from that answer that you completed the reading of Dr. Griffin's testimony very recently, then, just a few days ago?

A. No, it was a week ago Wednesday, I think.

Q. Now, when you say that you have read testimony in this case which has been given by members of the trade, how did you determine what testimony to read out of the entire record?

45638 A. These portions were sent to me by Respondents, by the Counsel for Respondents.

Q. Did you read all they sent you?

A. No, I did not.

Q. Could you tell me how many pages they did send you, was it a matter of testimony of half a dozen or a dozen witnesses?

A. I think that probably not more than three.

Q. Did you have submitted to you by Respondents' Counsel any of the exhibits in the case?

A. None whatever.

45639 Q. Now, Professor, in your answer to Mr. Withrow's questions, hypothetical questions, where you have stated that the hypothesis put to you did not in your opinion necessarily cause you to infer the presence of collusion, and that you considered the conditions set forth as conditions compatible with or consistent with competition, did you assume in that connection that competition, as a fact, did or did not exist in the cement industry?

45641 The Witness: I did not assume that competition did exist.

45642 By Mr. MacIntyre:

Q. When you answered this long hypothetical question of Mr. Withrow's, you say that you did not assume that competition existed in that instance?

A. I did not.

Q. Did you assume that collusion existed?

A. I did not.

Q. What did you assume existed in that case, then?

A. Neither one. I am basing the answers wholly upon the hypotheses that exist, the hypotheses presented to me.

Q. You have not in any of the questions that you have answered except where you were specifically asked to assume that competition did exist, assume, then, as a fact, that competition did exist in the industry?

A. No.

Q. And in such instances you have also failed to assume that collusive activity existed in the industry; is that correct?

A. I made no assumption of fact in either,—no assumption of fact with respect to either.

Q. You have taken into consideration in your answers to the hypothetical questions put to you only the assumed facts stated in such questions?

A. Yes, sir.

Q. And in that connection based your answers solely upon such assumptions?

45643 A. I have, sir.

Q. Now, in these hypothetical questions put to you by Mr. Withrow, did you recognize statements of assumed facts which accorded with testimony of these witnesses from the trade which you had read and which Respondents' Counsel had sent to you?

A. I have utterly forgotten any factual matter that was given in those.

By Mr. MacIntyre:

Q. You cannot tell us now whether or not that the assumed facts in these questions Mr. Withrow put to you accorded with the testimony that you have read in the case?

45644 A. No, I cannot.

By Mr. MacIntyre:

Q. Now, in response to a question Mr. Withrow put to you yesterday afternoon you told him that you considered the market in the cement industry to be at the destinations; do you recall?

A. Yes, sir.

Q. Professor, is there a market anywhere in the economic sense of the term unless there is competition in that market?

A. Certainly, certainly. It may be a monopoly.

Q. Would there be a market in such a situation in the economic sense of the term as used generally without qualification?

Mr. Withrow: May I have that question?

Trial Examiner Norwood: Read it.

(Question read.)

A. Yes, there is a market, for there are sellers

45645 and buyers; prices are made.

By Mr. MacIntyre:

Q. Even though it would be a monopoly market?

A. Yes, sir.

Q. And you would not need describe it as a monopoly market, but just as a market?

A. Yes, sir.

Q. Well, suppose that we use another term "free" market, would there be a free market at destination in the cement industry if you did not have competition there?

A. I do not know what you mean by "free" market, sir.

Q. One where buyers and sellers are free to bargain, make their own prices through the forces of competition.

A. I take it that the monopolist is free to make his price and the buyers are free to make theirs, and, therefore, there would be a free market so defined.

Q. But there would not be a free market in that sense of the terms when you did not have competition, would there?

A. Unless you so define it that there would not be.

45646 Q. Now, in the sense that you have used the term
45647 "market" here, Professor, if someone were to tell you that a market existed at destination in the cement industry, could you determine from that statement as made whether or not that was a competitive market?

A. They just said there was a market.

Q. Yes.

A. No, I could not tell from that.

Q. You could not tell whether it was competitive, collusive, or what, could you?

A. I could not.

Q. And you have not in your use of the term "market" qualified it in any way, have you, in your testimony here?

A. Not with respect to this matter that you are raising here.

Q. Well, you haven't qualified your use of the term "market" in any wise, have you, in your testimony?

A. I do not recall that I have. The testimony was extensive.

45648 Q. Well, what is your definition of "price" in the cement industry, thinking of the cement industry in the manner that Mr. Withrow has described it to you?

A. "Price" is the—price may be an offered price, or a bid price, or an actual price of sale. Taking the actual price in a sale, it refers to the amount of money that would be paid for a unit of cement by a buyer and to the seller.

Q. Now, using the term "market" you have used in your testimony here, without qualification or further description, can you determine whether or not price in line with the definition that you have just attached to it as paid in the market is a competitive price or a non-competitive price without knowing something further?

A. No, that could not be determined.

Q. Now, Professor, you have given us several answers

in reply to Mr. Withrow's questions concerning your definition of price competition contrasted with competition of other forms; do you recall?

A. I do not recall those.

45650 Q. Do you recall telling us on direct examination that it was impossible to separate price competition from other forms of competition; do you?

A. That is, I do not recall giving it, but that is my belief, sir.

Q. Well, I have a note here of your testimony to that effect, Professor, and you state that that is your belief, that it is impossible to separate price competition from other forms of competition.

A. That is right.

Q. Do you mean by that that the term "price competition" comprehends all forms of competition?

A. No, I do not.

Q. Well, what do you mean by the statement that it is impossible to separate price competition from other forms of competition?

A. Competition I defined as the rivalry of buyers in the sale of their product.

Mr. Porter: Do you mean sellers or buyers?

The Witness: The rivalry of sellers, yes, in the sale of their product, and this rivalry may take many forms. It may take the form of variation of price, or it may take the form of variation of services or variation in the quality of the goods.

45651 Q. Well, in your opinion—

A. So—

Q. —is there any type of competition that is not involved in this rivalry that you call "price competition"?

A. Is there any type of competition that is not involved in this rivalry?

Q. Yes.

A. No.

45652 Q. So it is separable; that is, price competition is separable from other forms of competition when you want to center your attention on the other forms of competition, such as services and the like?

A. Only as a convenience of talking about it, otherwise not; because you are giving on the one side a monetary consideration and you are getting for that physical goods and services. Now, in that sense all of this competition is a price competition if you want to so think of it.

Q. Do you consider that it is—that is, price competition is all competition, then?

A. Vice versa, that all competition may be put into this phrase "price competition."

Q. That is in all, that price competition is all competition?

A. You can't separate them.

45654 Washington, D. C.,
Tuesday, October 8, 1940.

45655 PROFESSOR RAYBERT WESTERFIELD thereupon resumed the stand and testified further as follows:

*Cross-Examination by Mr. MacIntyre (Continued).*

Q. Professor, at the close of our hearing last Friday we were talking about price competition, and I think you will recall that you stated your view was price competition comprehended all forms of competition unless you particularly wanted to center your attention on any particular element or form of competition and designate it price competition. Do you recall?

A. I stated it the other way, that competition included what we speak of as competition in price and competition in quality of goods themselves, and competition in the services.

45656 Q. But you do recall that you testified that you could separate price competition from other forms of competition if you cared to center your attention on that element of competition; is that right?

A. I said that competition included these forms of rivalry, and since the monetary consideration is given in exchange for goods and the services that you get, if you wish to center your attention on the price side and speak of competition in that sense—

By Mr. MacIntyre:

Q. As price competition?

A. As price competition.

45657 Q. If you cared to center your attention on the monetary amount that is paid for a commodity for

the purpose of determining whether or not some understanding had been arrived at fixing that amount, then it would be important to consider that as price competition apart from all other forms; is that correct?

A. Only in the sense that the competition in this case takes the form of variation in price, or does not take the form of variation in price rather than competition taking the form of variation in the services, and variation in the quality of goods.

Q. Well, it an agreement or understanding had been arrived at fixing the amount of, monetary amount that was to be paid so that there could be no variation in amount and you wanted to center your attention on it for the
45658 purpose of determining whether or not it had been fixed, it would be very important to define that element of competition as price competition; is that correct?

A. It seems to me your assumption included your answer there. You say if—

Trial Examiner Norwood: Well, what is your reaction to the question?

The Witness: As to whether it is important?

By Mr. MacIntyre:

Q. Under such circumstances.

A. I surmise if you are trying to center attention on whether or not there had been an agreement upon price that variation in price itself would be important, but—

Q. Be important to—

Mr. Withrow: I submit that the witness is entitled to finish his answer.

Trial Examiner Norwood: Let him finish it.

A. (Continuing) —but if for that price you are giving something more or less in the way of services or quality, that is also important.

By Mr. MacIntyre:

Q. But it is important, isn't it, Professor, under such circumstances to consider these monetary sums as price competition aside and apart from all other forms of rivalry about which you have been speaking; is that correct?
45659 A. Yes, because you could have the rivalry in change of price.

Q. And it is your view that if an agreement had been reached, or understanding had been reached by a number of producers to fix that monetary amount that they would

charge that such would constitute a restraint on price competition?

A. Yes, in the sense that you could not vary the price in that form of rivalry.

Q. It would be an important curb upon competition itself?

A. I do not think that is necessary.

Q. You do not think that the monetary amount that is paid is important, an agreement that fixes that is important in competition?

A. In the sense that you could not any longer rival—have a rivalry in fixing of price, then your rivalry would have to take the other forms; in that sense it is important only.

Q. Well, you don't think it would be important except in that sense?

A. That is all, just one of these three general forms of rivalry.

Q. Well, by way of comparison with the rivalry in services and the like, would you say that it would be more or less important?

A. I do not think there is any such thing as more or less important in those things, if competition includes the three forms, and price competition is used, you are
45660 looking always at that as the pay for the services and for the goods; importance is equal whether you change the price or change the form or the quality of goods.

Q. Professor, I want to ask you a question. It is the same question that Mr. Withrow asked you, I want to inform you of that.

Will you state whether or not the marketing practices as just described, which were those that he had described to you, indicate to you as an economist that they were arrived at by collusion or conspiracy? What is your answer to that question?

The Witness: Would you state that question?

Mr. Withrow: Your Honor, I object to the question. It is obviously incomplete and a question taken out of its context is very unfair, such practice,—apparently the question must refer to something else that went before it. I object to it.

Mr. MacIntyre: It happens that it refers to the long hypothetical question of Mr. Withrow's. I am stating

the question that was added at the end of all of those assumptions, so I am asking it again, Professor—and I do not want you to tell the Professor what his answer was in that case, Mr. Withrow.

Mr. Withrow: I move that that be expunged from the record.

45661 Trial Examiner Norwood: Well, I do not think we need expunge it, but we will try to straighten these matters out.

Mr. Withrow: I would like to find out furthermore whether or not the witness was allowed to answer that question on direct. I think we should have a reference to the page and to the line.

Mr. MacIntyre: He did answer it.

Mr. Withrow: What page?

Trial Examiner Norwood: I will ask Counsel now: Does his statement there, his statement as to the long hypothetical question, cure the difficulty?

Mr. Withrow: And I would also like to point out that we were not entitled on direct examination—

Mr. MacIntyre: To lead the witness.

Mr. Leisure: Oh, keep still. Is this thing going to continue on the record?

45663 By Mr. MacIntyre:

Q. Professor, I am showing you a set of assumptions that Mr. Withrow put to you which appear on pages 45525 and 45526, and I want you to read those and only those that appear on those two pages for the moment.

45664 Q. Now, Professor, I will ask you whether or not the marketing practices as described in those two pages in the assumptions put thereto you by Mr. Withrow indicate to you, as an economist, that they were arrived at by collusion or conspiracy?

A. My answer is, on the basis of that hypothetical question, that there is no evidence that they were arrived at by conspiracy or collusion; on the contrary, that the very fact of freight absorption indicates to me that there must be competition there.

Q. Would you undertake to say, Professor, that, on the basis of those assumptions on those two pages, there was no collusion or conspiracy involved in the situation put to you?

A. I do not undertake to say that, but it seems to me that there is nothing to give any indication or an inference that there was, and it seems to me there is rather an
45665 inference to the contrary; namely, that there is this freight absorption going on.

Q. You base your inference on the fact that there is freight absorption?

A. That is one very great indication in my mind that competition must be existent.

Q. What else? What else, besides freight absorption?

A. I would have to go over it again—

Trial Examiner Norwood: Speak a little louder, Professor.

A. I would have to go over it again to find out if there are others—

By Mr. MacIntyre:

Q. But you do not want to have your testimony here taken to the effect that no conspiracy or collusion existed in that situation?

A. My testimony only is to the effect that on the basis of that hypothesis there does not seem to be any inference that collusion did exist.

Q. But you do not want your testimony to be taken to the effect that no conspiracy or collusion did exist?

A. No, sir.

Q. What?

A. No, sir; I am not testifying to that point.

45667 Q. Assume that continued maintenance and use of a method of price quoting by a number of selling producers depends upon the ability and success of the selling producers to prevent a purchaser who buys for re-sale in competition with others from securing and selling a commodity at a price less than prices at which his competitors buy and sell, which would occur but for the method of price quoting and activities in support of same, used by the mentioned producers. In your opinion, as an economist, is that method of price quoting and activities in support of same, if maintained and continued, preventing competition from accomplishing anything that economists expect free competition to accomplish?

Mr. Withrow: Just a minute, Professor.

May we see a copy of that before the witness is directed to answer?

Trial Examiner Norwood: Oh, yes.

Mr. Withrow: And before we state our objec-
45668 tions? The question is highly objectionable, and we would like an opportunity to read it, first.

The Witness: I would like to analyze this, if I could.

By Mr. MacIntyre:

Q. Do you want to analyze it before they make their objections, or afterwards?

Trial Examiner Norwood: Counsel will read it first.

Mr. Withrow: Your Honor, I object to this question, assuming that the copy handed to me is the question, on the ground that the question itself does not make any sense; it is not based on anything contained in the record whatsoever, and it is all speculation, which we should not engage in here.

Furthermore, it refers to "such method of quoting prices," and there is no method described of quoting prices in the question. Furthermore, it refers to "activities in support of same," not mentioning what activities, and the whole thing makes the question so indefinite that I think it is an improper question, and we should not waste time on it. It is also very ambiguous.

Trial Examiner Norwood: Will Counsel just wait a moment? I want to read it.

The Witness: I think you will have to explain this question.

45669 Trial Examiner Norwood: Wait a moment.

Mr. Withrow: Wait until the Examiner has read it.

Trial Examiner Norwood: The objection is overruled. Answer the question.

The Witness: I think you will have to explain this question somewhat to me, so I understand it better.

By Mr. MacIntyre:

Q. What part of it do you fail to understand, Professor?

Mr. Withrow: Your Honor, I object to that question.

Trial Examiner Norwood: Objection overruled. Let him straighten it out.

Mr. Withrow: The witness should not be compelled to ask himself questions. It is the province of cross-examination for Counsel to ask the witness questions.

Trial Examiner Norwood: The objection is overruled.

A. What are these activities that you have in mind—but for the method of price quoting and activities?

By Mr. MacIntyre:

Q. In speaking of activities there, Professor, I am referring to any activities that would prevent a buyer from buying at a price less than his competitors bought at. Those are the activities I have in mind. It is possible that they would be agreements to prevent him from buying at lesser prices than his competitors bought at, and they might take the form of any activity in carrying out those agreements.

15670 A. No; considering it from any angle that is to be assumed in the hypothetical question—

Q. I have already assumed that, Professor.

A. It does not express a state of fact—

Q. I assumed the fact that activities are being carried on by the producing seller that prevents one buyer who is in competition with other competitors from securing cement at a price lower than his competitors.

Mr. Withrow: Your Honor, one minute Mr. MacIntyre assumes activities carried on by agreement, and then he re-states the question and drops out the agreement. I think the witness is entitled to know which he is assuming.

Trial Examiner Norwood: I will ask Counsel please not to interrupt any more, so that we can see if we can clarify this and get this economist's opinion on this set of facts.

A. I understand that the activities do include collusion; is that right?

By Mr. MacIntyre:

Q. Yes; they include collusion.

A. In both places where you use the expression "activities"?

Q. Yes; they include collusion. I am not changing the original question. I am expressing that in explanation of the original question, Professor.

45671 A. Well, my general answer is that if an actual agreement exists to that effect, it would be a restraint on free competition, but not if the individuals themselves acting in their own individual interest, acting as individuals, go ahead and do this sort of thing, by

custom or inertia, in the sense that it is the best thing for them to do.

Trial Examiner Norwood: That is, where each seller and each buyer reacts independently to the conditions, but in a uniform manner?

The Witness: Yes; independently, in a uniform manner, then it would not have been.

By Mr. MacIntyre:

Q. But if they followed those concertedly and in cooperation with each other, after having discussed the matter and arrived at an understanding, you would say that if that activity would permit them to maintain the method of competition, then it would serve as a restraint on the method of free competition?

45672 Q. Then, you would say that those activities that were carried out in concert and in cooperation among the sellers, after meetings and discussions and an understanding concerning them, would serve as a restraint on free competition?

Mr. Withrow: Now, may I have my original objection applied to this one, too?

Trial Examiner Norwood: Yes. The objection is overruled.

Answer the question.

A. I would say "Yes."

By Mr. MacIntyre:

Q. Now, what would be your answer on the basis of all the assumptions and explanations as they have been
45673 given by using the words "imperfect competition"; in other words, "imperfect competition" instead of "free competition"?

Mr. Porter: Your Honor, I object to that. All of the explanations that have been given in two days—

Trial Examiner Norwood: No; this is the immediate question here. Overruled.

Mr. Withrow: May we have the question read?

Trial Examiner Norwood: Read it.

(Question read.)

A. You mean wherever the word "free" competition appears in this question?

Trial Examiner Norwood: Yes.

Mr. MacIntyre: Change it to "imperfect" competition.

The Witness: Change it to "imperfect" competition.

By Mr. MacIntyre:

Q. Yes; what is your answer, then?

Mr. Withrow: May it be understood, Your Honor, that I object to this entire line?

Trial Examiner Norwood: Yes.

Mr. Withrow: I mean, the same as my objection to the original question. Just changing it over to "imperfect" does not cure the deficiency.

Trial Examiner Norwood: Yes; Counsel has an objection to both questions.

A. Well, if this word "free" is changed to "im-
45674 perfect," preventing imperfect competition—

By Mr. MacIntyre:

Q. From accomplishing anything that economists would expect imperfect competition to accomplish.

A. Those are the only two places in this question that this word "free" appears?

Q. Yes; otherwise it remains the same as before.

A. My answer to that is that it is indeterminate, because, although there may be collusion, using that word "activity" in that sense there, the collusion may apply to certain things which would not prevent competition in the others; because they are remaining as effective as it was before, or even increase it. You are simply closing one method of rivalry and leaving the others open, and the intensity of that rivalry may continue as much as it was before, and even become more intense, possibly, than it was before.

Q. In other words, your answer means that taking imperfect competition as you have applied it in describing the cement industry in this case, and using the assumptions that I have given you in this question, it would not add any restraint on the competition existing in the industry?

A. Restraint only in the sense that they cannot seek buyers by rivalry in that particular avenue. That is closed, but these others may remain open. So far as the assumptions go, they remain open, and the rivalry
45675 may be just as intense or even more intense.

Q. In that respect, your answer to this hypothesis in respect to imperfect competition is different from the answer that you gave on the hypothesis with respect to free competition?

A. Yes.

45676 By Mr. MacIntyre:

Q. Well, what is your testimony now as to whether or not the basing-point method of quoting prices is one of matching prices?

A. There is this method of pricing—call it "matching," if you wish.

Q. That is in the quotation.

A. It is part or involved as part of the basing-point system. It is not all of the basing-point system, by far, but part of it.

Q. Is the matter of making price quotations the same?

A. Yes; at a destination point.

Q. Now, Professor, would you say that sellers are acting as competitors when they strive to make their price quotations exactly the same to a particular buyer in a particular market, and in doing so know that they will be on a parity with each other as to the price quotation?

A. I think so. It is a part of their competitive effort to sell goods to buyers. If they know that the prices are identical, their competitive efforts, then, must go in other channels, in service, quality, or what not.

Q. Now, you realize that I am talking about price quotations rather than effectually paid prices? I am not talking about paid prices. I am talking about price quotations. You understand that, do you, Professor?

45677 A. Yes.

Q. Do economists expect that asked and bid prices on, say, one of the exchanges will be as uniform as the price paid for a commodity or a security at any particular given time?

45678 A. Well, I do not think any economist expects a bid and asked price to be uniform. I never heard
45679 of it, at least. The price that economists talk about is the price of the actual transaction.

By Mr. MacIntyre:

Q. That is, the one that was paid?

A. Yes.

Q. And when an economist states that he expects prices to be uniform on a homogeneous commodity in a particular market at a given time, he is talking about the prices paid on a transaction or a series of transactions?

A. That is the one the economist talks about when he talks about transactions actually put through.

Q. And— Go ahead.

A. But if the pattern of making prices differs from that on the exchange which you have described, where the sellers and buyers were familiar with this pattern and knew in advance surely what the other people were going to bid, then, if they expected to make any sale at all, they would have to bid that other price. Therefore, I would expect the bid prices also to be uniform where the pattern is absolutely known in advance. That is not true of the stock exchange.

Q. Is it true on the commodity exchanges where bid and asked prices are known just as well as the transaction prices?

45680 A. Bid and asked prices are not known on the exchange in advance. There is no way of determining it.

Q. Professor, what economic theory supports the last statement that you made to the effect that bid and asked prices for a commodity in any particular market, irrespective of whether or not a pattern is used in making the transaction there, that is, those bid and asked prices, are expected to be as uniform as the transaction prices?

45681 A. Why, it is a perfectly accepted thing among economists that if buyers are informed and if sellers are informed that you have one price, that is all.

By Mr. MacIntyre:

Q. That the quotations as contrasted with the paid prices would be uniform?

A. Quotations similar, of course.

Q. Can you cite us any particular economic authority that supports you on that view, Professor?

A. It is general economic theory.

Q. That quotations will be uniform as contrasted with the effectively paid prices?

A. If the buyers are informed, knowing how the price is made up, and if the sellers are informed, knowing how the price is made up, there can be only one bid and asked price because they won't bid and ask anything less than that. It would be just foolishness for them to bid lower than that.

45682 Q. Do you mean by that answer, that last answer of yours, Professor, that the statement of price quoting in the cement industry as you understand it is

so infallible that everybody knows what it is and it cannot be changed, and, therefore, it is uniform? Is that what you are trying to tell us?

A. I do not know what the facts are in the cement industry.

Q. Well, as put to you by Mr. Withrow.

Trial Examiner Norwood: Now, answer that other
45683 question, Doctor.

A. As the cement industry is described in the hypothetical question, I do not believe that a state of infallibility was pictured. We had secret price cutting, we did have price changes, so it seems to me that the assumptions you are setting up here contradict the hypothetical question.

By Mr. MacIntyre:

Q. Well, how does this last answer of yours fit into what you have said was economic theory, a few moments ago, where the buyer and seller knew what the price was and would not be deviated from?

A. I said if it be a fact the sellers do know, and if it be a fact the buyers do know, then that would be the result. I put it wholly hypothetically.

Q. From your knowledge as an economist you would say that the information put to you in the assumed fact by Mr. Withrow indicates to you that there is more perfect knowledge on the part of buyers and sellers as to price conditions in the cement industry than exist on the well organized commodity exchanges?

45684 A. My answer is "Yes." The commodity exchanges tend to approximate roughly the state of perfect competition. The cement industry is an example of imperfect competition. There is not a comparison that you are suggesting possible.

By Mr. MacIntyre:

Q. Would you say that there is, the cement buyer,
45685 in your estimation, basing your answer on what Mr. Withrow put to you in his long hypothetical question, that the buyer in cement is more informed than a trader in wheat on the Chicago Board of Trade?

Mr. Withdrow: Same objection.

Q. (Continuing.) As to price conditions?

Trial Examiner Norwood: Overruled.

A. A buyer of cement is used to a pattern of price making; a seller is used to a pattern of price-making, and they can quite exactly in advance—

By Mr. MacIntyre:

Q. You assume—

Mr. Withrow: Wait. Let him finish.

Trial Examiner Norwood: Let him finish.

A. —quite exactly in advance know what the price is going to be.

45687 Q. Professor, you testified here in the last few minutes that you assumed as a fact in your answer to Mr. Withrow's long hypothetical question that buyers of cement and sellers of cement were better informed, more perfectly informed, concerning the prices that would 45688 be quoted and the prices that would be charged for cement than as is the case of a dealer in wheat on the grain exchange in Chicago.

Now, I am asking you that if you were to assume that fact, would your answer to Mr. Withrow's long hypothetical question have to be changed? Now, do you understand?

Mr. Withrow: Your Honor, I object to the question. There is no testimony by this witness that he assumes as a fact that buyers and sellers are better informed. The testimony was clearly that he concluded from that hypothesis that that fact existed, and he is now asking—he is now asked "Now, assume that you did assume it." I think it is improper cross-examination.

Trial Examiner Norwood: I think that is clear to the witness. He can answer the question now with the Counsel's explanation.

The Witness: Well, I confess that I am confused. My answer may not be responsive. It may not be even what I mean to say. I believe that I understand from much reading and much theorization in economic theory about perfect competition, that the produce exchanges are nearest approximation to a perfect competition. The cement industry, as described in the long hypothetical question, is a form of imperfect competition, and as described in the hypothetical question the sellers did follow a pattern of making prices, determining prices, and it was well 45689 known to all of them; it must be known to the buyers because of their long experience it.

It seems to me that in the light of these two things that

I could say that the sellers of cement do have, and the buyers of cement do have, a fuller knowledge of what the price bid or offered at is than he would on the exchange where the pattern of price-making; the system of price-making differs radically from it.

By Mr. MacIntyre:

Q. You think you arrive at that conclusion principally because of the pattern, the assumption in Mr. Withrow's long hypothetical question as to the pattern of prices?

A. Yes, that is the reason why they can forecast what a price is going to be because they are used to an orderly system of marketing.

Q. You assume from that that if the pattern were followed as in the past by all sellers, then one seller would know that the price quotations of the others would be the same; is that what you mean to say?

A. Yes, if it be followed.

Q. But all of that is based on the premise that one seller anticipates that other sellers will use the same formula?

A. Exactly.

Q. In quoting the same price?

A. Exactly.

45690 Q. Now, as to this economic theory that you talk about, that leads to uniformity of price, you have stated that you would expect that under competition, imperfect competition especially?

A. No, we would expect one price under perfect competition or imperfect competition.

Q. And if there was an understanding among sellers to make their prices the same and uniform, you would also expect them to be uniform under monopoly; is that correct, —monopolistic conditions?

A. There could not be any understanding under monopoly. There is only one person selling. There seems to be a conflict of ideas there in your question.

Q. Well, we would say under collusion, where the group of sellers agree to make their prices the same, you would expect uniformity there as well as under the other two types of competition?

A. Why, it is in the form of the assumption, yes; you said assume that there is.

Q. No. I assumed that there was collusion attempting

to make them the same. I say you, as an economist, would expect the result to be that they are the same; is that correct?

45691 A. Well, if the collusion is effective and there is no breaking away from it, my expectation is that it is difficult to hold a group of colluders together, and never have any defections from it; there may be a variable price there even under collusion, but if it is effective it is a monopoly and you would have one price.

By Mr. MacIntyre:

Q. You expect for it to be the same even under monopoly,—under the circumstances?

A. One thing further, it may be that these colluders will agree upon a different price and not upon one price; that is—

Q. But I assumed that if they agreed upon one price.

Now, Professor, I am going to state to you another set of assumptions.

(Mr. MacIntyre hands a paper to the Trial Examiner.)

Mr. Withrow: Could Counsel for Respondents have a copy of the questions?

Mr. MacIntyre: His Honor probably has one.

(The Trial Examiner hands a paper to Mr. Withrow.)

By Mr. MacIntyre:

Q. Professor, I am going to read to you a statement:

45692 "Although it is essential to draw a sharp distinction between sporadic and constant uniformity in fields in which price is determined by direct negotiation between buyer and seller in each transaction, there is no need for a similar distinction in the case of competitive bids. Bids are submitted in response to a specific invitation; they are concerned with a definite transaction. Identity of bids is seldom a mere fortuitous occurrence or the product of natural economic causes, as may be the case of sporadic uniformity in a fluctuating market. Such identity is an abnormal condition, which is not to be anticipated in an industry truly competitive."

Do you, as an economist, agree with that statement?

45693 A. May I ask whether you use this expression "uniformity" here as equivalent to identical, at an instant of time, or whether you regard it as identical over a period of time?

By Mr. MacIntyre:

Q. First, we will consider it as a matter of uniformity, identical in bid, quotations by a number of sellers at a given time; that is, as contrasted with the price paid to any one of those sellers pursuant to those bids.

A. In response to the—it says, "there is no need for a similar distinction in the case of competitive bids." I do not know what you have in mind,—need for what? It seems to me that as far as I am able to analyze what need was referred to here, that the same distinction might well be applied to sporadic and constant uniformity at this point of time in the case of these competitive bids.

Now, the last sentence there, "such identity is an abnormal condition which is not to be anticipated in an industry truly competitive."

I would say "No" to that, provided individuals seeking their self-interest acted in that self-interest individually, and knew,—and there was an orderly system of price making, and they knew it, and followed it, then you would have identical bids even though they bid competitive bids.

45695 A. I answered the question as I understood it, which says competitive bids; that is not a price or a completed transaction. It is in the nature—

Trial Examiner Norwood: Does that complete your answer now?

The Witness: It does.

45696 Q. Professor, at page 43540, you have stated that the industry put to you by Mr. Withrow in his hypothetical question is a reasonable one, that is the use of the basing-point system that Mr. Withrow put to you concerning the industry, is what I mean. Do you recall that testimony?

A. Would you let me look back at this a little bit?

(The witness is looking at the transcript.)

Q. Do you recall that testimony now?

A. Yes, I do.

Q. Now, if Mr. Withrow, however, included some additional assumptions in that long hypothetical question to the effect that the basing-point system was born in collusion, is maintained and its continued use depends upon collusive arrangements among sellers,—that is, producing sellers in the cement industry,—would you still say it is reasonable?

A. Well, it is reasonable and natural. I think the ques-

tion "reasonable" in the sense that it seems to be in accord with natural economic conditions.

Trial Examiner Norwood: With those assumptions there would it be so considered,—with those extra assumptions?

The Witness: Well, the assumptions that we started with did not include collusive arrangements, as I understand.

Trial Examiner Norwood: Now, add these.

The Witness: Now, they are adding that collusive
45697 agreements gave origin to it, and collusive agreements perpetuate it; is that right? And the question is, Would I regard that present industry as reasonable?

By Mr. MacIntyre:

Q. Yes.

A. Well, its reasonableness would, then rest upon whether or not it was serving the general public interest, and there is a general assumption among economists that competition in the long run, in most lines—I cannot say most, but a great many lines, is the most desirable form of arrangement.

Q. Well, now, will you please answer the question as I put it to you, with the explanations that you have already given to it?

A. The only way that that would be determined whether or not it was reasonable is whether it would conform to those. I think it would be, yes.

Q. You think it would still be reasonable?

A. Yes.

Q. That is, even with the assumptions that I have put to you?

A. Yes.

Q. And even though the collusion was for the purpose of maintaining uniform price quotations in the industry?

A. Well, that is an additional assumption now, making a further assumption now.

Q. Oh, yes, yes.

45698 A. The collusion might go to fixing uniform prices. It does not, as I understand it, include collusion with respect to the other forms of rivalry, so competition might continue in those forms.

Q. Well, we will consider it from the viewpoint of uniform delivered price quotations at the present time.

A. It would still seem to me reasonable, yes.

45701 Q. Well, in answering this last question we do not have the information about the level of the prices; to answer it as you have you would have to assume that these selling producers in their collusive arrangements fixing a uniform delivered price quotation would fix that unselfishly and not contrary to the public interest; is that correct?

A. Not contrary to the public interest.

Q. You were assuming all of those?

A. Yes.

Q. Mr. Withrow put to you several questions concerning dumping; do you recall?

A. I remember that questions were asked, yes.

Q. And you have stated that one of the effects of dumping was to lower the price in the market into which the goods were dumped; do you recall that testimony?

A. I said, as I remember it, that the offering of this additional supply on the market into which the

45702 goods were dumped would influence the price, probably tend to depress the price.

Q. In that market?

A. In that market, yes.

Q. Now; what about the market from which the goods were shipped? What effect on price would that have there?

A. Well, it is removing from the supply side of the market so much of the goods, and it may simply make it possible to support the price there.

Q. That is, probably have the opposite effect of depressing—that is, the effect opposite to depressing?

A. Not in the sense of raising it, but in the sense of maintaining it, holding the price up.

Q. Now, assuming that there is dumping in both directions, some sort of a reciprocal dumping, where the market from which cement is dumped to another finds that cement is also dumped from that market back to the first, what effect on prices as well as supply can you see from such operation?

A. Well, in the nearby markets of each of these sellers the price would be supported there against the decline because part of the supply is removed, and on the other hand in the area to which they were commonly selling the supply is increased, and naturally would have the effect of keeping the prices down, or even lowering them there.

Q. I do not think you fully understood, Professor, that dumping takes place at the farthest end into a mar-
45703 ket from which other dumping is also taking place. Is your answer the same?

A. Do you mean the—

Q. With that understanding.

A. Yes.

Will you state it again, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. That is, you have a producer at point "A" and another producer at point "B"?

By Mr. MacIntyre:

Q. The producer at point "A" dumps into point "B," and the producer at point "B" dumps into point "A."

A. Do you mean in the identical towns, and so forth?

Q. Yes; or sufficiently so that it is just about the same effect.

A. Well, the effect on the supply there would depend upon how much relatively was dumped on either side. If you are sending a certain amount and getting a certain amount back in, of course, the net is the thing that affects the supply.

Q. If Mr. Withrow had included that set of assumptions in his questions to you about dumping, he would have had to inform you at the same time concerning these relative amounts before you would have been able to answer his question; is that correct?

45704 A. The expression "dumping," as used, as I remember the other day, was international dumping, and then the question was asked me if the same general notion about dumping could prevail in America. The real fact is we do not use the word "dumping" in our domestic trade.

By Mr. MacIntyre:

Q. But the fact is you draw an analogy there for Mr. Withrow between this international dumping in the shipment of cement and the freight-absorbing basis on that domestic freight?

A. Yes.

Q. I am attempting to use his assumptions and an additional one where you have reciprocal dumping between point "A" and between point "B." I am now asking you,

if you took those additional assumptions as to reciprocal dumping, could you have answered the question put to you, in the same manner as you did answer it?

45705 A. I do not know what the question was and in what manner I answered it.

Q. He asked you as to what the effect would be on the price in the market into which the goods were dumped, and you told him it would be lower. Now, I am asking you, if you put to his assumption concerning dumping this one of mine concerning reciprocal dumping, what would be your answer?

A. The answer is that there would be an offset there, as I answered a moment ago.

Q. Tending to support the price at both points, without depressing it at either?

A. No.

Q. Well, what is the answer?

A. The answer that I just brought out was that if there is dumping by "A" into "B"—

Q. And by "B" into "A."

A. And by "B" into "A" of equal amounts, there would be no effect.

Q. You cannot tell what the effect would be without knowing what the relative amount would be?

A. To the degree it is reciprocal, that is true.

Q. When "A" and "B" in such a situation cooperate with each other in such a manner as to promote the dumping from "A" to "B" and from "B" to "A," would you say that that is competition as you have known it?

45706 A. I do not know what you mean by "cooperation" there.

Q. Helping, Professor—cooperating, bringing about, aiding, assisting. Do you understand now?

A. Well, as I understand this reciprocal dumping, when "B" dumps into "A's" territory, "A" is not helped. He cannot; he is not permitted; he is victimized, so to speak, and the same is true when "A" is dumping into "B's" territory. You might think of that as cooperating, I don't.

Q. Now, Professor, I am asking an additional fact, that when "A" and "B" cooperate to the point of assisting, helping each other, to carry on this reciprocal dumping, does that indicate to you competition between "A" and "B"?

45707 A. It seems to me to be self-contradictory that

"A" would cooperate with "B," so that "B" would send goods into "A's" territory and destroy his own market.

By Mr. MacIntyre:

Q. And if "B" would do the same thing.

A. It seems to me that it would be a—

Trial Examiner Norwood: Do not take issue with the assumptions, but give us your opinion based on that assumption, and whether the assumption is reasonable to you or not.

A. The assumption—

By Mr. MacIntyre:

Q. Assuming that that is a condition, that they are cooperating in the way of assisting each other in dumping in each other's territory, would you call that competition?

45708 The objection is overruled.

Mr. Withrow: It is just a waste of time.

The Witness: What is the question now?

By Mr. MacIntyre:

Q. I am asking you, Professor, if the hypothesis that I placed before you, in your mind, is consistent with competitive action?

A. To the degree that they are cooperating on this matter, of course, you are restraining competition, if that is what you wish me to answer to.

45709 Q. Professor, you have stated that one of the effects of dumping, as Mr. Withrow described dumping to you, was to permit a producer to dispose of part of his product in other markets and thereby help him meet his high overhead or high capital costs. Do you recall?

45710 A. Well, the privilege of marketing a part of your product abroad, rather than unloading it all on the domestic market, provided you are getting enough of that, you are more free to cover your extra costs, and anything towards your overhead would help the seller.

Q. Would help the seller?

A. Yes.

Q. Now, would it help him if at the same time the seller at point "A" was dumping at point "B" and the seller at point "B" was dumping at point "A"—would dumping help him in that respect under such circumstances?

A. To the degree that the thing was actually reciprocal.

Q. That effect, as you have stated it to Mr. Withrow, would not obtain; is that correct?

45711 A. To the degree that dumping were reciprocal, the effect would depend upon the net balance.

By Mr. MacIntyre:

Q. Without knowing what that net balance happened to be, you could not answer the question, could you, as to any effect?

Mr. Withrow: The same objection to this question, Your Honor.

Trial Examiner Norwood: Overruled.

A. If the balance were of zero amount, it would be of no effect. If the balance were very large, it would be of considerable effect on one of the sellers.

45712 Q. Professor, you have stated that the quotation of f.o.b. mill prices would result in a condition of disruption in character. Will you please explain and describe the disruption that would occur?

A. At the time of transition from the present system, the basing-point method of quoting prices to the f.o.b. system, there would be a great disruption of business.

Q. What do you mean by "disruption," as you have put it there?

A. Well, the dealer organization, the selling system, the location of your mills, would have to be changed. The transportation—directions of transportation would have to be changed. The facilities for handling business at various points would all have to be changed.

Q. You can conceive at this time of all those disruptive effects, but you cannot conceive that it would have any disruptive effect on price levels and uniformity of price; can you?

A. Well, I think if it works itself out it would have a decided effect on those things.

Q. What kind of an effect?

A. Well, there would be a local and possibly nation-wide effect.

Q. Well, what nature?

A. My general expectation, as I gave it in the
45713 testimony the other day, is that the level of cost would be raised and the price would be raised—the price level.

Q. You think that it is natural and logical, from an

economic viewpoint, for sellers in the cement industry to oppose any move in the direction of f.o.b. mill prices because the effect would be to raise the prices nationally; is that correct?

Mr. Withrow: May we have that question read?

Trial Examiner Norwood: Read the question.

(Question read.)

A. I would answer that by saying the effect of it would be one discouraging any further change, but there may be many, many other considerations besides this one.

By Mr. MacIntyre:

Q. You have stated, Professor, in your direct testimony, that you would draw no inference of collusion from the fact that a selling producer merely adopted and followed precisely the quoted prices of another selling producer?

A. I see no inference of collusion.

Q. I want to read you a statement:

"Prices move together and with the same result when there is a generally recognized price leader, a dominant competitor to whose prices all others adapt themselves, recognizing that therein lies their greatest ultimate gain. In this event it makes no difference how many competitors there are or what percentage of the total each pro-
45714 duces, the price established is identical with that which would be set if there were no competition at all."

Do you agree with that statement?

A. As I understand this paragraph, it simply describes what we commonly call price leadership, and your question is whether I agree with that phenomenon.

By Mr. MacIntyre:

Q. Yes; as one economist, would you expect that under price leadership?

A. If they followed the price of that leader there would be only one price. If there were a thousand, there may be a thousand following; or ten thousand, ten thousand following. I would agree with you.

45715 Q. What?

A. I would agree with you. It describes what I understand to be price leadership.

45716 Q. Professor, I call your attention to your answer, beginning at line 11, and in lines 12 and 13, page 45566, where you say:

"I have no factual knowledge as to the total amount of cross-hauling. Theoretically, I do not believe it is any worse than the other wastes of competitive—I see
45717 no reason for stipulating that one waste, at least."

Now, I am asking you whether or not, having made that answer, you can cite us any industry where you have cross-hauling to the point and to the degree that I have outlined to you, between point "A" and point "B," where it is reciprocal in any industry, and also where you have no collusion?

Mr. Withrow: The same objection.

Trial Examiner Norwood: Objection sustained. You are making him a factual witness now.

45718 Trial Examiner Norwood: I will proceed to propound a question to the witness.

Mr. Withrow: That is all right.

Trial Examiner Norwood: Mr. Witness, referring to page 45566, beginning at line 11, and going through line 14, would you tell us what the basis of your answer there is?

Mr. Withrow: Do you want to see your testimony, Professor?

The Witness: I think so.

(Mr. Withrow hands a copy of the transcript to the witness.)

The Witness: Well, there are lots of wastes in the competitive method. I should say that I think probably my answer was wastes of competition rather than "competitive" there. There are lots of wastes of competition well recognized by economists. Cross-hauling has been pointed out as one of these wastes. The question is raised here, and I see no reason for stipulating about this one waste, when there are many, many more types of wastes in a competitive system. That is what I mean to say, sir.

Trial Examiner Norwood: Well, the basis of your statement is your economic studies.

The Witness: Yes.

45721 Q. You have outlined to us, Professor, that cross-hauling is a waste of competition. Now, I ask you whether or not in any of your economic studies you have ever come upon any discussion of cross-hauling in a competitive industry where collusion does not exist to the degree of dumping as between points "A" and "B," that is, reciprocal dumping, such as we have been talking about here this morning.

A. As I interpret the question, it asks me whether I know of any industry in which cross-hauling bulks as large as it does in the cement industry.

45722 By Mr. MacIntyre:

Q. No; the nature, the reciprocal dumping type of cross-hauling. I am not talking about the amount of it. Do you know of any study that you have ever made of any industry, in your economic life, where dumping of a commodity from point "A" to point "B"—reciprocal dumping, if you please—and cross-hauling of that nature, in the absence of collusion, was ever practiced?

Mr. Withrow: Your Honor, this question is even more objectionable than the last. It is unintelligible, and asks specifically as to other industries, which you have ruled out on direct examination.

Trial Examiner Norwood: I now rule he may be permitted to go into it and bring out fully and completely the Professor's basis for these statements, whether it be a question of eliciting facts, or otherwise.

Mr. Withrow: At page—

Trial Examiner Norwood: This is cross-examination. If he opens up some factual matters, you will be permitted to ask him further questions about them.

Mr. Withrow: You will note on page 45566 that the witness has testified that he has no factual knowledge, and is testifying theoretically.

Trial Examiner Norwood: He is allowed to cross-examine him on that statement.

45723 Mr. Withrow: He is not asking him for the basis of his testimony. He is asking precisely the same question that you would not let us ask him.

Trial Examiner Norwood: Objection overruled.

By Mr. MacIntyre:

Q. Whether you have made any study of that, Doctor.

A. All of my study of marketing from 1915 on and the practice of selling in one of these territories has been such that I would say that in practically every industry I know of there is some of it. It is a question of degree.

Q. That is, of reciprocal dumping from "A" to "B," and vice versa?

A. Just an illustration, let us assume—this is hypothetical, but let us assume that there is a department store in Toledo, Ohio, and another department store at Detroit,

Mich., and they are selling the same sort of shoes. It may be that some of those shoes move from the Detroit store into the territory of the Toledo store, and some of the shoes from the Toledo store into the territory of the other store.

There is a case of reciprocal sales in one another's
45724 territory. It is cross-hauling going on. I said, from a theoretical angle, I could not see any reason for particularizing cross-hauling as among the wastes of competition. I tried to make it plain, and that is the only basis on which I was answering it.

Q. Have you ever made any economic studies that showed you that such a thing never took place in American industry?

Mr. Withrow: The same objection.

Trial Examiner Norwood: Overruled.

45725 By Mr. MacIntyre:

Q. (Continuing.) For a homogeneous commodity?

A. All my studies of marketing have indicated that cross-hauling is a very frequent phenomenon.

Q. With that feature of regularity, like in a homogeneous commodity.

Mr. Withrow: I still object on the same grounds.

A. The illustration I gave is one where I would assume that those stores would exist for 20 years and carry on the same sort of practice.

Q. And that department store in Detroit would be selling to a customer regularly or to a group of customers regularly in Toledo, shoes of exactly the same brand that the department store in Toledo would be selling to a group of customers in Detroit, and both of them making sales at the same price?

Mr. Withrow: The same objection.

Q. (Continuing.) As a regular proposition.

A. All of which I think is thoroughly possible in theory; yes, sir.

Q. I am asking you if you ever noted such to be the case in your economic studies?

Mr. Withrow: The same objection.

A. My studies of merchandising indicate that sort of thing as going on all the time.

45726 Q. Can you cite us any study that you have ever made where such did take place?

A. In the studies I have made of department store operation; yes.

Q. Such as the Detroit-Toledo proposition, regularly taking place, from day to day, week by week, and month by month? Is that your statement—on the same commodity?

45727 Q. Professor, when we adjourned before noon we were talking about cross-hauling. Do you, as an economist, consider that there should be any distinction drawn concerning nature and degree of cross-hauling?

A. Yes.

Q. In an effort to determine whether or not it is competitive or non-competitive act?

A. Yes. Some cross-hauling—now, let me put it the other way: Where the goods are transported in one direction one season of the year and in another direction in another season of the year, I think on my direct testimony I did not think that that ought to be regarded as really cross-hauling. It ought to be contemporary rather than seasonal, so that is one kind that should be surely taken out in considering especially whether it is competitive or not, and I take it—

Q. Well, now, is there anything— All right. Go ahead.

A. —and I take it this question of whether re-
45728 ciprocation obtained should also be considered.

Q. As something that would give rise to a significance that simply cross-hauling not of a reciprocal character would not give rise to; is that correct?

Mr. Withrow: Your Honor, I object to the question. It is absolutely unintelligible.

Trial Examiner Norwood: Overruled.

A. My thought is that if one is considering cross-hauling from this angle of competition he would have to take up the various ways in which cross-hauling appears. He may find something of real significance in it; he might not.

By Mr. MacIntyre:

Q. Well, can you determine from considering the mere fact of cross-hauling of either of the types about which we have been discussing whether collusion exists?

A. No. As I said repeatedly, my own feeling is that the inference, if one is to be drawn, is that it is competitive in character.

Q. But you do not by such statement attempt to rule out collusion; that is, the existence of collusion?

A. No. The assumption was that it seemed very difficult to understand why people who are colluding would collude to put their goods into one another's territory.

Q. You just don't think that they are operating as competitors when they do do that?

45729 A. No. My suggestion was that it seems to me an evidence of competition rather than of collusion.

By Mr. MacIntyre:

Q. That is, of two competitors, supposedly competitors, or supposed competitors, dumping into each other's territory, and cooperating, assisting, helping each other to dump into each other's territory?

45730 Q. My question is when they act that way do you consider them acting as competitors?

A. Well, it seems to me that there is a contradiction here. If the collusion is taking the form, say, of fixing a price, or if the collusion is taking a form of establishing competitive conditions, it is one thing. If they are colluding to help one another, as you suggested, these activities to help one another, that would be another circumstance. I am not sure of the activities you had in mind when you stipulated that.

Q. Any activity that would have the effect of aiding, and assisting each other to invade the other markets?

A. Well, if they actually did collude to help one another, it seems to me rather ridiculous.

Q. Can you explain such action from any concept of competition?

A. Colluding to help one another invade one another's territory?

Q. Yes.

A. Only on the condition that there would be some advantage gained by that action which would more than compensate for the disadvantage of having somebody come in and take part of your business.

Q. It would have to be a mutual gain, then; that is, a gain that would result mutually for the two?

A. Well, this gain would be something to offset

45731 the loss that he would take.

Q. But it would have to be a gain mutually accruing to the two before they would do a thing like that, you think?

A. It would seem to me that nobody would collude to do

a thing like that unless he did something in exchange for that that he regarded worth more.

Q. Mutual gain; is that correct?

A. Yes.

Q. Now, Mr. Withrow asked you quite a number of questions about the activities of cement manufacturers in discontinuing trucking, of adopting certain measures looking toward prevention of diversions in transit and such as that, and you told him that you believed that they could have adopted those practices independently in their self-restraint. Do you recall?

A. Yes.

Q. Now, I am going to ask you to assume that manufacturers, selling manufacturers, discussed among themselves the adoption of such practices and came to an understanding that they should discontinue certain practices and adopt certain others of these practices, and that they forthwith went out and concertedly adopted them; that is, adopted some and discontinued the others; that accorded with the understanding reached. Will you still say that they could, under such circumstances as I put to you, act independently, as you see it?

A. Of course, this is a specific instance or meeting
45732 that you have in mind, and there may have been many other things discussed there.

Q. Yes. But they discussed this particular practice.

A. But there must be quite a background.

Q. Yes.

A. It is quite possible that even without this expressed agreement that you put that they would do this, that the thing would have arisen anyway.

Q. I am talking about not without it, but with it.

A. I say it might have arisen anyway.

Q. Now, do you say that they were still acting independently after having done that, as you see it?

A. Well, my answer is that having agreed to adopt this and then adopt it, it is not an individual activity at all.

By Mr. MacIntyre:

Q. I say that they discussed it and they arrived at an understanding to the effect,—that is, among them,—to the effect that it would be well for all of them to adopt it, and then they go out immediately or shortly thereafter
45733 and concertedly adopt it. To you, viewing it as an economist, would they still be acting independently?

A. I do not understand that adverb "concertedly" the way you are using it there in that statement.

Q. You do not know what the word "concertedly" means?

A. I want to be sure that I understand you, that is all.

Mr. MacIntyre: The question is whether he as an economist could consider that they were acting independently in carrying them out after having met, discussed the policies and practices, and arrived at an understanding that they all should do it, and then simultaneously did it.

Trial Examiner Norwood: Well, you can answer that question.

The Witness: Yes. This time he has left out the word "concertedly," and I can say that they might have done that, even then individually; apparently there was
45734 no binding obligation, any agreement to do it, and so thereafter each one might still have exercised the discretion whether he would do so.

By Mr. MacIntyre:

Q. You would still view it as independent action?

A. I say it could be, yes; no inference ought to be drawn from that.

Q. You consider that it could be just as much so as you considered it could be under the hypothesis Mr. Withrow put to you?

A. Yes; I always put that, that it could be, yes.

Q. Mr. Withrow put to you quite a number of assumptions concerning clauses in specific job contracts that protected the buyers against price decline and you testified in response to those questions that such clauses as you viewed them would probably work against or work for price rigidity; do you recall?

A. Yes, because it would make the buyer realize that his loss might be so much greater that he would be the more hesitant to change his price.

Q. Do you mean the seller or the buyer? You said "the buyer."

A. No, the seller, sir.

Mr. MacIntyre: May we have that answer read to him.

Trial Examiner Norwood: Read the question; or, rather, read the answer.

45735 (Answer read.)

A. Yes, certainly. I made—

By Mr. MacIntyre:

Q. You want that word "buyer" changed to "seller"?

A. Yes.

Q. Now, would that same reason apply with respect to desires to increase prices under such contracts?

A. Well, if a man should raise his price and no one else followed him he would probably lose his business, so it would seem to me that the same sort of hesitancy would be included there, too, yes.

Q. But the very fact that such a clause was included in a contract would not operate at all to cause a seller to hesitate to increase his price, would it?

A. Yes.

Q. Just the fact that that clause was included in the contract?

A. Yes.

Q. He has not guaranteed anyone against price increases, why would it work toward rigidity and against price increases, Doctor?

45736 A. That clause to protect people against a decline of price, of course, would make him hesitant to lower his price.

Q. We are talking about price increases now, Doctor. How would it operate with respect to price increases?

A. Well, that particular one would not prevent the raising of price, but the other clause which was mentioned.

Q. It would operate as a factor toward rigidity with respect to price decreases?

A. Decrease.

Q. But would not operate in that direction with respect to price increases; is that correct?

A. Yes.

Q. Now, Professor, you told Mr. Withrow that you did not consider that cooperation is required to maintain a basing-point system or the basing-point system in the cement industry.

A. I do not think that there is any implied necessity for cooperation in the sense of collusion.

Q. Now, let us go to your background and knowledge, and so on, concerning basing-point systems.

Have you made any study through secondary materials, or otherwise, of the operation of any basing-point system similar to the one used in the cement industry where collusion was not used to maintain it?

45737 A. Well, I have read practically everything that has been written, I think, on the subject of basing points in my studies of marketing, and—

By Mr. MacIntyre:

Q. Well, can you—

Mr. Withrow: Let him finish his answer.

Trial Examiner Norwood: Wait a minute. Let him finish.

A. (Continuing.) —and as to whether collusion obtained or not, that is a factual question which I do not pretend to know.

45738 By Mr. MacIntyre:

Q. In other words, you made studies of the operation of basing-point systems in other industries, but you never yet inquired into any of them as to whether or not collusion was used to maintain them?

A. No, sir.

Mr. Withrow: Same objection.

Trial Examiner Norwood: Yes.

By Mr. MacIntyre:

Q. Then, how can you say, Doctor, that it could be maintained in the cement industry without collusion?

A. Wholly on the basis of hypotheses.

Q. You do not know whether a basing-point system has ever been maintained except by collusion, do you?

A. Not as a factual question, no.

Q. Now, with respect to this optional f.o.b. mill system, Mr. Withrow asked you about, you told him a buyer would compare laid-down cost and would not buy from—would not buy f.o.b. mill if the laid-down costs were higher than the delivered price as quoted, and that there would probably be dealer dissatisfaction.

Those were the three objections you raised to it. Now, I am going to ask you what the buyer would do as you visualize the thing as an economist, if his laid-down cost were lower by taking it at the mill than by taking it

45739 on the delivered price quotation?

A. It seems to me he would buy that way.

Q. And you think that because some would do that and others would want it otherwise, that that would cause dealer dissatisfaction?

A. Yes; suppose that one of the dealers had trucks,

or had facilities for using trucks and the other did not, this would be working to the advantage of the person who could make use of the truck system.

Q. Can you conceive it as practical to quote prices f.o.b. mill with such differences in those practices as make only due allowance for differences in the cost of manufacture, sale, or delivery, resulting from the differing methods, or quantities in which such commodities, or to purchases sold, or delivered?

Mr. Withrow: He has read him a part of the Robinson-Patman Act.

45740 Trial Examiner Norwood: He is asking him whether a state of facts enumerated in the statutes are practical from an economic standpoint. Yes, he may ask him that.

Mr. Withrow: He is asking him: Is that law practicable?

Trial Examiner Norwood: No. The objection is overruled.

Counsel knows he may answer it.

Mr. Porter: Would you have that question read again, Your Honor? I do not think you understood it at the time you read your ruling.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: It is to such purchases sold?

Mr. MacIntyre: Or delivered.

Trial Examiner Norwood: The objection is overruled. Answer the question.

A. The question is whether I consider a non-uniform f.o.b. mill price system practical provided--

By Mr. MacIntyre:

Q. That the differences in them.

A. The differences in the price f.o.b. mill?

Q. Make only due allowances that I have stated.

A. For what? Due allowances for what?

45741 Q. For differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities or to such purchases sold or delivered.

A. Do I regard that as a practical system?

Trial Examiner Norwood: Yes.

The Witness: Under certain conditions it might be; yes.

By Mr. MacIntyre:

Q. Well, in the cement industry, the hypothetical cement industry that Mr. Withrow has put to you, would it be practical?

A. Well, if you are to change to that system, you would have a tremendous confusion. In certain areas, I think, where there were a lot of mills, and which are now depending upon their freight-absorbing sales, those mills would have to go out of existence; you would have a complete reorganization of the industry. As I see it, the mills would be located near to your consuming population, rather than to the sources of the material; the number of mills would be much larger than at the present time. Now, I would say, if one were willing to have such a complete reorganization of an industry occurring, you could put that situation into effect, possibly, and make it practical.

Trial Examiner Norwood: Would the mills, then, be smaller?

45742 The Witness: And the mills, as I see it, would be almost an atomization of the mills, yes, if the purpose is to avoid absorption, as appears.

Trial Examiner Norwood: And it would make it a local business?

The Witness: Yes.

By Mr. MacIntyre:

Q. Professor, as an economist, is it logical and natural to expect that a seller would regularly and continually be accepting different sums of money per unit on a product from one of his customers than from others?

A. It seems to me that a seller could consistently ask as high a price as he could from different customers, yes, particularly if they were located at different points.

Q. What about the matter of his accepting regularly and continually different sums of money from one than from the other?

A. I think that is perfectly possible. For instance, a manufacturer in town "A" could be selling in twenty different towns, and asking different prices from all his customers. It is perfectly logical and proper for him to do so.

Q. You are referring to the yield at the mill; that is, the net return?

A. I am talking about the delivered price now. That is the price I am speaking of all the time.

Q. I am talking about the money that he accepts,
45743 now, irrespective of whether it is for cement at one point or at another. Would you expect him to continually and regularly be accepting from one customer sums of money that would be different from, greater or less than the sums of money he was accepting at the same time and over the same period from other customers?

A. He is interested in selling his product, and if he has to sell that product in different markets, he would undoubtedly quote the price that prevails in that market. The fact that he realized a different amount has nothing to do with the question, as I see it.

Trial Examiner Norwood: Now, is your answer "yes" or "no"?

The Witness: Would the question be read again, please?

(Question read.)

A. Yes, of course.

Q. And to the extent of having one customer nearby his point of production, to whom he sells a thousand units at, say, one dollar—

Mr. Bond: Price, one dollar.

Mr. MacIntyre: The monetary sum of one dollar, Mr. Bond.

By Mr. MacIntyre:

45744 Q. Of one dollar, and then going to the trouble of soliciting and making sales to another customer more distantly removed, from which he received only 75 cents per barrel, and at the same time permitting this nearby customer to buy another thousand barrels from some supposed competitor, can you conceive of that as something that would regularly and naturally occur in a competitive situation?

A. Very decicedly so. All that has happened there is that this fellow is seeking to sell some product at a distance, and absorb the freight, and if he can on those distance sales just make the extra cost—anything at all—it is the most logical thing in the world.

45752 Q. Professor, does this principle of indifference, price indifference, based on an economic theory, that a buyer will pay one seller no more for a homogeneous article than he will pay another seller for the same one, apply with equal force to the seller, with respect to the acceptance of money from one buyer as from another;

that is, accept more or less money from one buyer than from another?

Mr. Withrow: May I have the same objection to this entire line, Your Honor?

Trial Examiner Norwood: Yes. The objection is overruled.

A. I would say that if the seller is giving the same goods and the same services, and other things like the interrelations are the same, he would be indifferent as to whether he sold to "A" or "B" or "C."

By Mr. MacIntyre:

Q. You think that the principle will apply with equal force as to the buyer?

A. That is seller indifference; yes.

Q. And you would expect it to normally so apply and operate?

45753 A. Yes.

Q. Now, Professor, I want to show you a statement. I believe you have been using the words "imperfect competition" here as describing a condition which you considered to have obtained in this hypothetical question that Mr. Withrow put to you?

A. Yes.

Q. And I believe you stated that it does obtain in that industry as you look upon it from the hypothesis?

A. That is right.

45763 Q. Well, when did you first use this term "imperfect competition," to describe the condition that you used here?

A. I used to teach elementary economics at Yale College during the '20's, and I very frequently talked about imperfect competition. That is not a new creature in my lingo at all.

45769 Q. Well, Professor, can you cite us any instance where this term "imperfect competition" was used to describe the condition that you have used it to describe in your direct testimony prior to the time that you attended this conference in New York with Professors Arthur R. Burns, Dr. J. M. Clark, Dr. Friday, Dr. Griffin, Dr. Fairchild, and Professor Vaile?

A. I have used it, myself, the word "imperfect" competition for 20 years.

Q. In exactly the same sense and to describe the same

condition that you have used it in your direct testimony here?

A. It is quite impossible for a man to remember 20 years every time he has used that word "imperfect" competition, but I would say the grand generality of the
45770 usage of the word "imperfect" competition in recent years have been that way.

Q. Now, when you speak of "recent years," of course—

A. Five years, ten years, I don't care how long.

Q. Would you say that in your lectures to your students at Yale for the past 10 years that you have used it in exactly the same sense you have used it in your direct testimony here?

A. Very decidedly, yes.

45771 Q. Have you ever applied it to the operation of basing-point systems prior to your appearance
45772 here?

Mr. Withrow: Same objection.

Trial Examiner Norwood: Overruled.

A. Every year in my marketing course I discuss with my class for two or three weeks the subject of basing points and I describe it, bring it out, that it is an industry illustrating imperfect competition; it is—

Q. Haven't you taken the position here, Professor, in recent years that it is impossible to have competition, that is, real competition, in American industry, and you might as well turn to something else, either imperfect competition or monopoly, or something of the like?

A. I regard imperfect competition as real competition; therefore, your question is to my mind rather absurd.

A. Well, will you please answer the question.

Trial Examiner Norwood: And you have not taken that position?

The Witness: Of course not.

Q. Do you mean to say that you haven't taken the position that probably we should not try to reach this goal of competition in its usual sense in this country?

45773 A. I do not know what you mean by this goal, or what kind of competition he is talking about. The question is beyond me.

Q. Well, let us talk about free competition. Haven't you taken the position that we probably should not try to reach the goal of free competition in this country?

Mr. Withrow: Same objection.

A. Do you mean as a universal thing?

Q. Yes.

A. Why, we economists have given that up. We recognize that monopoly is desirable in certain industries, of course; we recognize that imperfect competition is not only desirable but an absolute necessity in industry, and—

Q. Well, will you—

Mr. Withrow: Let him finish, please.

A. And we further recognize the fact that perfect competition is impossible in an industry; that is the position that American economists and world economists take.

45774 Q. Is that your position?

A. It is my position; yes.

Q. Well, isn't it your position that "many of our national idols are breaking down; our traditional insistance on competition among industrial corporations is fading, as its unwisdom and impracticability are proved by experience"?

45776 Q. Now, you have refreshed your memory and recollection from reading Commission's Exhibit, for identification, 3266, Professor, and will you now tell us whether or not you did write the statement that I read into the record a few minutes ago?

Mr. Withrow: Your Honor, I object to the question. I think the question should be complete in itself. I object to the entire procedure since that statement in no way tends to impeach the witness, has no bearing on any issues in the case in any way whatsoever.

Trial Examiner Norwood: The objection is overruled.

A. I wrote this; yes, sir.

By Mr. MacIntyre:

Q. And that accurately portrayed your position on that question at that time?

A. May I interpret it?

Q. Well, you can interpret it later if you care, and this date was 1931, wasn't it?

A. Yes.

Q. That you published that, in December, 1931?

Mr. Withrow: Could we see the document shown 45777 the witness?

Mr. MacIntyre: In fact, I offer the document in evidence (handing the document to Mr. Withrow).

Mr. Porter: Is that whole book offered in evidence?

Mr. MacIntyre: No, the whole book is not marked, Mr. Porter.

In fact, if the record is clear as to the statement in the record, I withdraw the offer of the exhibit, anyway. I believe the record is clear on it, so I withdraw the offer of the exhibit, and—

Trial Examiner Norwood: Proceed with your cross-examination.

Mr. MacIntyre: Well, I withdraw the offer of the exhibit.

Trial Examiner Norwood: Yes. Well, proceed with your cross-examination.

Mr. MacIntyre: I say that is all for the witness on cross.

Mr. Withrow: Well, I move to strike the questions and answers relating to this document if the document is not offered.

Trial Examiner Norwood: The motion is denied.

Mr. Withrow: This will be available for redirect?

Mr. MacIntyre: You now have it for redirect, Mr. Withrow. I do want it back, however.

45778 Trial Examiner Norwood: I was not going to receive that document in the record. He admitted having said it. There is no point receiving it.

*Redirect Examination by Mr. Withrow.*

Q. Professor, Mr. MacIntyre did not give you an opportunity to interpret this, and you said you would like to have one. I show you Commission's Exhibit 3266 and ask you to interpret it for us.

A. "Many of our national idols are breaking down; our traditional insistence on competition among railroads, among public utilities, among industrial corporations is fading, as its unwisdom and impracticability are proved by experience." I think that all I said or meant to say was that an insistence upon competition, perfect competition among railroads, had proven impossible, and the Government itself had adopted the policy of setting maximum rates and minimum rates, and many, many other things, and put it under regulated monopolies. That is the thing, that traditional insistence on that kind of competition has been given up, is fading; public utilities the same way; more recently it has passed into other industries. It is a going thing. I have forgotten—

45780 (RESP. EX. 3467 was offered and received in evidence.)

Mr. MacIntyre: I think if Mr. Withrow would stipulate that that is a page of the magazine "Current History" of the issue of December, 1931.

Mr. Withrow: Is it?

Mr. MacIntyre: Is that true, Mr. Witness?

45781 Trial Examiner Norwood: Well, is that true, Doctor?

The Witness: December, 1931.

Mr. MacIntyre: "Current History."

Mr. Withrow: "Current History."

By Mr. Withrow:

Q. Professor, I would like to show you the transcript for the other day, and I direct your attention to page 45563, the last question appearing on that page, and the answer which starts that page, and continues over, and ask if the Reporter correctly transcribed what you stated.

Trial Examiner Norwood: What is the line?

Mr. Withrow: Line 22.

A. It seems unintelligiblle here.

By Mr. Withrow:

Q. Well, would you tell us what you stated, if you can recall; answer the question again?

A. I would expect in an industry like this, so far as the hypothetical question went, there was no outstand-

45782 ing large company but any price following was a following of one of a smaller one.

Q. Now, you testified this morning about price leadership. There was a quotation, a statement read to you, and you were asked if you agreed to it. Now, can competition exist under conditions of price leadership, Professor?

A. This referred to the quotation that was given to me this morning about price leadership.

Q. Yes.

A. As I recall the statement, there was read a paragraph to the effect that if price were announced by a big, dominant corporation and followed by many sellers, that there would be no price competition. My testimony has been all the way through that competition was a rivalry among sellers along the line of price variation or service variation or commodity variation. This is a case where

they have adopted the same price so that competition might still continue in these other two ways. I also took pains to explain that if one wanted to center his attention on price competition and vary the services and vary the character of the commodity that one could, if he wished, still call that price competition. Also, I would say that in line with what I have testified that although these people were following the same price that they still were in the position of anyone being free to change his price at any time because as described to me it was merely a
45783 question of voluntarily following this leader, so that as I see it competition would still prevail. It is simply a state of competition, and not an act of competition. Again I mean acts of competition in price are not being put into effect.

45785 Q. Professor, do you know whether or not a small group of economists conjured up this concept of imperfect competition for use in this case as just charged by Mr. MacIntyre?

A. I do not know of any such conjuring.

Q. Do you have the slightest idea of what Mr. MacIntyre is talking about when he made that statement?

A. No, I do not.

45786 *Recross Examination by Mr. MacIntyre.*

Q. This paragraph that was received in evidence as Respondents' Exhibit 3467, you have used there the term "industrial corporations" with just as much emphasis as you have used "railroads and public utilities," haven't you, Professor?

A. Equal emphasis here; yes.

45788 Q. Now, you have told us that railroads and public utilities were somewhat in the nature of natural monopolies. Can you cite us industrial corporations that would also be considered natural monopolies in this country?

A. I do not think it is necessary to say that an industrial corporation is a natural monopoly to explain what I was saying, and—

Q. So it is—

Mr. Withrow: Let the witness finish his answer.

Trial Examiner Norwood: Let him finish.

A. It is any industry in which the old idea of
45789 unbridled competition has proved to be disastrous for the public interest that the State had decided that it should not be allowed to continue. I can mention many industries of that order. The best I think of right now was the milk industry. It is again the social interest to let the competition of milk run unbridled.

By Mr. MacIntyre:

Q. So, if the fact of natural monopolies applying to railroads and public utilities played any part as a reason for your including them in this statement it would not apply as a reason for your including the term "industrial corporations," would it?

A. They are not a part.

Mr. Withrow: I object to the form of the question. I object to the question that it is going away beyond the scope of the redirect examination.

Trial Examiner Norwood: Overruled.

Answer the question.

A. It is not necessary, as I just said, that these industrial corporations be natural monopolies.

By Mr. MacIntyre:

Q. Well, you did not include the reference to them in this statement for that reason, did you?

A. Because they were natural monopolies.

Q. That is, with the thought that they were not?

45790 A. Not at all.

45792 EWALD T. GRETHER was thereupon called as a witness for the Respondents, and, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Leisure.*

Q. Professor Grether, are you from California?

A. Yes.

Q. Do the qualifications which I now hand to you correctly represent your qualifications as an economist?

A. Yes, sir.

Mr. Leisure: If Your Honor please, in order to save time, instead of bringing out the Professor's qualifications by question-and-answer form, I would simply ask that these qualifications be inserted in the record without objection.

Trial Examiner Norwood: They may be.

The qualifications are as follows:

I am a member of the Department of Economics of the University of California. I came to California as a graduate student in 1922 and obtained my Doctor's degree in 1924, and joined the California staff in the fall of 1924 as an instructor in economics. In 1925 I went to the
45793 University of Nebraska as an assistant professor.

In 1926 I came back to California as an assistant professor and have been there ever since except for two leaves of absence. In 1939 I was appointed Professor of Economics on the Flood Foundation at the University of California. I have had summer or other teaching connections also at U. C. L. A., Pennsylvania, Columbia, and Montana Universities.

I received my A.B. degree with a major in economics at the University of Nebraska in 1922.

My teaching has consisted primarily of marketing and economic theory and I am familiar with the principal publications in these fields.

As a part of my work I have published two books:

(1) Resale Price Maintenance in Great Britain (1935).

(2) Price Control under Fair Trade Legislation (1939) and a considerable number of articles.

I am a member of the American Economic Association and the American Marketing Association, and at present I am the managing editor of the Journal of Marketing, the official publication of the American Marketing Association. I worked with the Division of Review in the N. R. A. just after the Schechter decision when N. R. A. was trying to make some studies on the effect of the codes. From time to time I have also done some work in the nature of consulting work in the field of marketing.

45794 Mr. Leisure: On the basis of the qualifications inserted in the record, Your Honor, we now tender the witness as a qualified expert in the economic field.

Mr. Wooden: I have no objection to accepting the witness as an expert in the general field of economics,
45795 but beyond that I make no concession.

Trial Examiner Norwood: He is so accepted.

By Mr. Leisure:

Q. Professor Grether, I am going to ask you a hypothetical question which I am going to describe as the long hypothetical question in the future, so that whenever I

make reference to it I will ask you to have reference to the assumptions that I make in the long hypothetical question. With that explanation I would like for you to assume that the following description is a statement of the conditions of the cement industry as of the present day.

Q. Cement is a homogeneous commodity. There
45796 are approximately 150 cement mills, scattered throughout the United States, owned by more than 50 separate independent companies. Cement mills usually have large capacities with large capital investments. The capacity of most mills exceeds the local demand. Freight is a substantial part of the cost of cement delivered to the point of use or resale. The volume of the demand for cement varies in each locality from year to year and month to month. Sometimes there is a large demand in a given market and at other times there is a small demand in that market. The manufacturers of cement which market their product in any given territory, are engaged in a struggle for tonnage.

There are a very large number of buyers, and they are scattered throughout the country. At any point of substantial cement consumption, there are several buyers. Buyers of cement (including dealers, contractors, and other purchasers) are well informed with respect to the prices charged and the methods of sale employed by competing manufacturers. Buyers purchase on the basis of the lowest cost at the point of use or resale. For more than twenty years buyers have refused to pay any more for one brand of domestic cement than another. For more than twenty years cement has usually been quoted and sold at destination prices. Buyers of cement normally request prices f. o. b. destination. From time to time some manufacturers have, upon request, made sales to customers f. o. b. mill.

In quoting prices a manufacturer usually takes
45797 into consideration the prices which have been quoted by his competitors for delivery at the destinations in question. At any destination the openly quoted delivered price appears to reflect some pattern. The most prevalent of these patterns is the lowest combination of some price base plus actual freight from the basing point. Another pattern appears to exist when the same price is quoted at a number of adjacent destinations (such prices having sometimes been called in this case flat or zone prices). A third pattern appears to exist when prices

radiate from some market area (such prices having been sometimes called in this case arbitrary prices and have been made around some ports to meet the competition of foreign cement, and at other places to meet other competitive conditions). Flat, zone and arbitrary prices do not reflect the variations in actual freight charges.

Fifty or more mills are basing-point mills and about 60 percent of the productive capacity of all mills is located either at or within a few miles of basing-point mills. These basing-point mills are scattered throughout the country. Each manufacturer can at any time make its mill or plant a basing-point mill. At different times the same mill has been a base mill and a non-base mill. The total number of base mills has varied from time to time. All manufacturers, including those with basing-point mills, shrink their mill nets in making sales at distant points.

45798 Whenever a lower price is openly quoted by one manufacturer, other manufacturers selling at that destination have found it necessary either to reduce their delivered price to meet this lower price or to withdraw from actively soliciting business at that point. It has been the experience of each manufacturer that an open reduction in prices is met immediately by competitors, and that a quoted reduction in prices does not bring a compensating increase in the cement consumed where the decrease is effective nor a compensating increase in the sales of the manufacturer initiating the decline. Each manufacturer has invested considerable time and money in developing channels of distribution, such as dealers and contractors. A mere reduction in price does not ordinarily drive a manufacturer out of a consuming area where it has developed customer good will. It has been the experience of each manufacturer that an open reduction in price has, from time to time, provoked further reductions in price by competitors. Such open price reductions have sometimes resulted in price wars.

For more than twenty years most manufacturers have regularly broadcast their prices to the dealer trade. In quoting decreases in price a manufacturer usually makes it effective at once and buyers are usually reimbursed for shipments made just prior to the decline. In quoting increases in price a manufacturer usually makes it effective in several days after the announcement is received

45799 by the trade. In the event of an increase no sales are made at the higher prices unless all competing

companies announce that they are following the increase, and no such sales are made until the quotations of all the companies competing in a given market have become effective. Any manufacturer, no matter how small, can initiate an effective decrease in price.

For more than twenty years dealers and contractors have been protected on specific job contracts in the event of an increase in price, and have been given the benefit of the new low price in the event of any decline in price. Upon an increase in price dealers and contractors are protected on spot shipments by having an opportunity to buy any quantity of cement for which they will take shipment within 15 days after the increase has become effective in that market. Various manufacturers have found that they do not sell a substantial quantity of cement at their increased price even if their competitors followed the increase until several months after the increase became effective.

Some manufacturers have quite consistently adhered to their publicly quoted prices and other manufacturers have made sales at reductions from their publicly quoted prices, such sales being intended to be secret prices. Other manufacturers have made sales reflecting special terms or concessions not contained in their open price announcements.

The announcements to the trade of these manufac-
45800 turers which made secret prices or concessions quote a price not below the lowest openly quoted price of any competitors. These secret price cuts often become known to competitors. There have usually been some secret prices, concessions or variations in terms being made by various cement companies. The volume and amount of such secret prices have tended to increase when the demand for cement was small.

Customers often give manufacturers an opportunity to meet the lowest price available to them whether it is publicly or secretly quoted. Manufacturers have observed that if a special price is quoted to one customer, other customers upon learning of this fact demand similar concessions. When competitors learn of such price concessions they frequently meet such lower prices either by granting similar concessions at the same or other destinations, or by openly announcing a general price reduction which affects a large consuming area. Manufacturers have been shown from past experience that extensive secret price concessions in many markets may result in open price wars.

There have been price wars in the cement industry. In the event of price war prices have been reduced to a level approximating the out-of-pocket costs of production. Price wars continue until some manufacturer takes the initiative in raising prices and his lead is followed by his competitors. The quoted price at any given destination does
45801 from time to time remain stable for long intervals except to the extent of changes in freight rates. In some markets there have been periods of time up to three or four years where the lowest quoted price has not changed, except to the extent of changes in freight rates.

Diversions in transit are usually not permitted by manufacturers, and they try to discourage and prevent diversions. Many manufacturers in widely scattered parts of the United States do not permit dealers to come to their mills and take delivery by truck. Some receive no requests from customers for truck delivery. Some manufacturers allow dealers to come to the mill and take delivery by truck. Such sales are frequently made at the same price as though the cement had been delivered to the dealer's warehouse.

Now, Professor, please state whether or not in your opinion as an economist the marketing practices as described could logically be the result of an economic development in such an industry?

45802 Trial Examiner Norwood: I think it is going to be a waste of time to go ahead now and bring in another witness, which will be the fifth, I believe, to make his answers to these long hypothetical questions. I really think it is cumulative in respect to those questions. If you have anything to ask the economist that has not been covered once or twice or three times by these other economists, I think we might hear it. Otherwise, I am inclined to agree with Commission's counsel that it is cumulative, and we should not spend any more time on it.

45804 Mr. Wooden: It seems to me that Your Honor
45805 would be warranted at this time in ascertaining for your own guidance how much more of this economic testimony may be expected, of a cumulative character.

Trial Examiner Norwood: I do not know how much more they are going to offer, but I know how much more I am going to listen to.

45806 Mr. Leisure: I will restate the last part of it.

By Mr. Leisure:

Q. And now, Professor, please state whether or not, in your opinion as an economist, the marketing practices as described could logically be the result of an economic development in such an industry?

A. In my judgment, the marketing practices as described in the long hypothetical question could be the result of an economic development of the industry.

Q. Professor Grether, under the same assumptions, will you state whether or not you consider that the marketing practices as described preclude the existence of free competition?

A. In my opinion the marketing practices as described in the question do not preclude free competition, as I define it.

Q. As I have used the term "free competition," and as you have used it, before you go any farther, will you just explain how you do use that term?

A. When there is free competition, as I understand it, there is freedom of entry into a trade or industry, and the various members of the trade or industry compete
45807 independently to maximize their net revenues or minimize their net losses. When I say independently, I mean without agreement, or other arbitrary interference, as by the government, with their independent pursuit of net gain.

Q. Now, the record here, Professor Grether, shows considerable discussion, with adjectives before the word "competition," not merely "free," but "pure," "perfect," and "imperfect." Do you use the term "pure competition," as an economist?

A. Yes.

Q. And will you explain the use of that word?

A. I use the term—I might add a statement before I begin discussion of "pure competition," that it is almost always necessary to add an adjective to the use of the term "competition." For instance, some economists use the term "free competition" rather broadly. Now, when I use the term "pure competition," I have in mind that condition in which buyers and sellers compete on both sides of the market in the purchase and sale of a standardized commodity, and also a condition in which there are so many buyers and sellers competing that no one of them

can affect the price or other result in the market in an appreciable or measurable manner.

I use the term "perfect competition" differently, by the way.

Q. And how do you use the term "perfect competition," please?

A. By "perfect competition," I mean, in addi-
45808 tion to the two assumptions I have just given, of product standardization and a large number of buyers and sellers, the further characteristics that the factors of production are fully mobile and infinitely divisible, and likewise the assumption that the buyers and sellers have full information concerning conditions, that is, supply-and-demand conditions, in the markets.

Q. Now, as to these terms "pure" and "perfect," do you use them in practical situations, or are they purely theoretical?

A. These concepts are purely abstract theoretical concepts for the purpose of formal and technical economic analyses. The concept of "perfect competition," obviously is more abstract than the concept of "pure competition." One cannot find perfect competition in reality. One can probably get rather close to pure competition in reality.

Q. Directing your attention now, Professor Grether, to the long hypothetical questions and the assumptions contained therein, will you state whether or not the marketing practices as described indicate to you, as an economist, that they were arrived at by collusion or conspiracy?

A. In my judgment the practices as described under the assumptions—how was that question worded?

Q. I wanted to know whether those assumptions indicated or suggested to you that they were arrived at by collusion or conspiracy.

A. In my judgment the practices under the as-
45809 sumptions were not arrived at by collusion or conspiracy.

Q. As a part of your study in the general field of economics, have you had occasion to study also the basing-point method of marketing?

A. Yes; I have given considerable attention to the basing-point method of marketing. I wish to indicate the background of my thinking of this sort.

As a general student of economics and marketing, I watched the literature more or less casually for a number

of years. Then, about four or five years ago I began giving a course, which I called "The Theory of Domestic Trade." That course begins with a discussion of interregional trade, and from that plateau of the nature and condition of interregional trade I moved down to an analysis of the geographical price structure, and, therefore, for four or five, perhaps six years, I have been watching this literature rather closely and interpreting it to my students.

Q. I am going to ask you whether there are certain conditions under which you, as an economist, would expect a commodity to be sold by the use of basing points?

A. Yes; I think it is possible to indicate certain conditions that would, in my judgment, produce a basing-point type of price structure.

It seems to me, in the first place, you must have a fairly homogeneous product. In the second place, you
45810 must have geographical distribution of the sellers, as well as of demand. Likewise, freight must be a significant portion of the final price paid by consumers, but not such a large proportion as to keep the product entirely in a local market. Also, the fixed or overhead costs must be a large proportion of the total cost, and, in addition, they must be a large absolute amount, from the standpoint of production costs. Finally, the demand for the product should be of such a nature that consumption does not increase in a significant degree when prices are reduced.

Q. Then, given such a set of circumstances, do I understand, Professor Grether, that you would or would not expect a basing-point method in marketing to appear in an industry?

45811 A. I am at a dead loss now. I am answering the question with respect to my list of conditions in the industry; is that right,—as I enumerated them?

By Mr. Leisure:

Q. Yes.

A. Under that assumption, I feel strongly that a
45812 basing-point system of pricing would appear, but I wish to add one thing that perhaps is not clear. I stated that there was a geographical distribution of buyers and sellers, that suggests that there is a relatively small number of sellers competing at any one point.

Q. Professor, let us assume the following description as the general story of the development of the marketing method used in the cement industry:

The manufacture of Portland cement in the United States commenced in the latter part of the Nineteenth Century. Around 1879 several mills were built in the Lehigh Valley in the northeastern part of Pennsylvania where there was a deposit of a so-called cement rock. Until about 40 years ago, most Portland cement used in the United States was imported from Europe, and moved into the interior from the Atlantic seaboard. Most of this imported cement was sold to distributors f. o. b. dock. The distributor shipped the cement to the point of use where he resold the cement to the ultimate consumer at a delivered price. At that time foreign-produced cement
45813 was considered by most purchasers to be superior to domestic cement.

For a time it was commonly believed that the Lehigh Valley was the only locality in the United States where high quality cement could be made. After some years it was discovered that a satisfactory Portland cement could be manufactured elsewhere by blending various materials. Thereafter mills were built in various parts of the country, so that today there are approximately 150 mills scattered throughout the United States. Originally, some brands of Portland cement sold at a premium over other brands, but all domestic Portland cements have for over 25 years exceeded the published minimum standard specifications and for over 20 years customers have refused to pay more for one brand than another. In the early days the Lehigh Valley mills shipped cement all over the United States. At first domestic Portland cement was sold usually f.o.b. mill to cement distributors, who resold to cement dealers and consumers at a price f.o.b. point of use; freight has always been a substantial part of the delivered cost. Some of the new western mills sold direct to dealers, and consumers, and when dealers were sold at or about the same price as distributors the latter gradually died out and have not generally existed for the past 25 years. The competition by these new mills was continued, and prices were reduced by the Lehigh Valley mills. The older manufacturers slowly eliminated their distributors and
45814 made their sales direct and they took over the marketing practices, as well as the functions of the

distributors. With the elimination of the distributor, there were three major factors leading to the selling at delivered prices, and that these were (1) the manufacturer stepped into the shoes of the distributor who had been selling at delivered prices, (2) dealers requested delivered prices or information so they could compare delivered costs, and (3) the necessity of meeting competition of newer mills. Dealer customers, being used to delivered prices from distributors, requested either delivered prices or information as to the amount of freight charges. Cement continued to be sold in some instances f.o.b. mill with the freight costs to point of delivery in cents per barrel often set forth in the quotations made by various manufacturers and in other instances f.o.b. destination. With the inception of this practice by a few manufacturers, purchasers usually requested cement prices on a delivered basis. Gradually most manufacturers acceded to the dealers' requests. Prices on cement came usually to be quoted and sales made on a delivered price basis.

As new mills were built in the Middle West and successively in other parts of the country which were nearer freightwise to various consuming markets than the Lehigh Valley mills, these new mills found that buyers purchased cement from that company which sold at the lowest
45815 delivered cost, so that the western mills either met the competition of the older Lehigh Valley mills by quoting delivered prices which were as low as the prices quoted by the Lehigh Valley mills or quoted lower prices. Some of the Lehigh Valley mills met the lower prices of the new mills by reducing their prices at such destination points. This process was repeated in many instances until one, and later a number, of these new mills quoted delivered prices which usually represented the sum of some fixed figure at the new mill point plus freight to destination. At first some of the Lehigh Valley mills attempted to meet this new competition by using varying and different f.o.b. mill prices in quoting for sales to purchasers at destinations nearer freightwise to the new mills than to the Lehigh Valley mills. Some of the eastern mills found that the practice of varying their f.o.b. mill prices resulted in customers' complaints and loss in good will, and made it difficult to meet the competition of the delivered prices quoted by the new western mills. As a result, they met the delivered prices quoted by their western competitors

by quoting delivered prices. These prices usually reflected the sum of some base at a new mill plus freight to destination. As new mills were built throughout the country, this process was repeated as to some of the mills which made their delivered prices the sum of some base at their mill plus freight to destination, thus making their mills basing points, while some of the new mills did not make
45816 themselves basing points but quoted delivered prices to meet the prices quoted by competing mills; that such non-base mills are generally small mills or distant from large consuming markets.

About 1910 the practice of broadcasting quotations to customers and prospective customers was initiated by one manufacturer and thereafter other manufacturers also distributed printed quotations to the trade.

Cement prices generally came to be quoted on a delivered basis. From 1900 until 1930 the volume of cement consumed in the United States steadily increased. There has been from time to time an actual shortage of available cement in various markets. New mills were built either to meet the increased demand or as promotional ventures. Mills have usually been built at the site of satisfactory raw materials. Such materials are heavy and expensive to transport for any distance. Most mills are systematically kept up to date with the newest equipment. The product has been improved in quality. Such improvements in the product have increased costs of production. Many manufacturers have gone into bankruptcy and mills have been abandoned.

Under those assumptions, Professor Grether, will you please state whether or not you consider that the story of the development as described in these assumptions precludes the existence of free competition?

45818 A. In my opinion, the historical development of the industry as described in the question does not preclude the existence of free competition.

By Mr. Leisure:

Q. Well, Professor Grether, will you state whether, in your opinion as an economist, the historical development described is or is not one which you would normally expect to find in an industry of this type?

A. It seems to follow reasonably normally from the conditions of the industry as evolved.

Q. In that question I used the words "of this
45819 type." Will you amplify your answer a little as to sellers, and tell us what you have in mind?

A. You mean this type of industry?

By Mr. Leisure:

Q. I use the word "type," but I do not think the use of that word, without some explanation, is entirely clear, and I wanted to find out from you what you meant by the statement that it conformed to—

A. By "type of industry," I have in mind the conditions such as I have been listing in the previous question; yes.

Q. That is what I wanted to know.

Professor Grether, I am going to ask you to as-
45820 sume the following:

Cement is a homogeneous commodity and buyers will not pay more for one brand of cement than another. Buyers almost always compare the cost of the product laid down at the point of use or resale in making purchases of cement. Buyers are well informed with reference to prices quoted and market conditions. Freight is a substantial part of the laid-down cost of cement. There are approximately 150 cement mills scattered throughout the country. These mills are owned by more than 50 separate independent companies. Cement mills usually have large capacities with large capital investments. The capacity of most mills exceeds the local demand. Manufacturers have found that reductions in price do not bring a compensating increase in cement consumption.

Cement is usually sold at delivered prices. The prices quoted for cement by various manufacturers at any given destination are usually the same. Some manufacturers do from time to time make secret price concessions. The number of such concessions granted varies from time to time and such concessions usually become known to competitors. All manufacturers shrink their mill nets in making sales at distant points.

Cement is often shipped from one mill into the territory immediately adjacent to some other mill. Manufacturers usually refuse to allow customers to take delivery of cement in customers' trucks at the mill. Manufac-
45821 turers usually do not permit diversion of cement in transit.

Please state whether, in your opinion as an economist, the marketing practices as thus described could logically be the result of an economic development in such an industry?

A. In my opinion, the marketing practices as described could be the result of an economic development in such an industry.

By Mr. Leisure:

45822 Q. Professor Grether, under the same assumptions will you state whether or not you consider that the marketing practices as described in these assumptions preclude the existence of free competition?

A. In my opinion, the marketing practices as described do not preclude the existence of free competition.

Q. And would you say that the marketing practices as described indicate to you, as an economist, or can you draw such an inference, that they were arrived at by collusion or conspiracy?

A. The answer is "No." That is, I see no secondary inference of collusion.

45823 Washington, D. C.,
Wednesday, October 9, 1940.

45824 EWALD T. GRETHER, thereupon resumed the stand and testified further as follows:

*Direct Examination (Continued) by Mr. Leisure.*

Q. Professor Grether, when we finished up yesterday, I had been discussing with you the long hypothetical question, and after that I asked certain other hypothetical questions, and on page 45820 of the record I gave you certain assumptions, with another question, and I will ask you, if you will, to add—

Q. (Continuing.) I will ask you to add to those 45825 assumptions the following statement:

Assume the quoted delivered prices are usually the equivalent of the lowest combination of the sum of the price base, plus railroad freight, to the destinations in question. What effect, if any, would that have upon your answers to the last three questions?

A. My replies would still be the same.

Q. We were using several times yesterday the word "competition," and before we go further, Professor Grether, I would like to have you describe for the record what you understand to be the meaning of the term "competition."

A. As I indicated yesterday, the term "competition," in economic analysis, almost invariably, unless used loosely, should be qualified by some other term, or one can speak of competition in a very broad sense as merely rivalry between firms in a trade or industry, but various adjectives are normally used, like "free competition," "pure competition," "perfect competition," and "imperfect competition"; and I might add that in the literature in this field just now there is a tendency to refine that analysis much more, and other words are beginning to appear also. I do not think I used the term "imperfect competition," for instance, yesterday, as far as I recall.

45826 The Witness: May I ask whether my answer is adequate? That is, I indicated that I would always want to qualify the term "competition" by the use of some descriptive adjective.

Trial Examiner Norwood: He asked you to give us your definition of it, as you use it; did he not?

The Witness: That is what I did yesterday. I used it in this way yesterday: Under various—

Trial Examiner Norwood: You told us here what you did not do, but I do not think you have given us the definition yet.

The Witness: Well, if I were asked to use the term "competition," without qualifications, I would think merely in terms of rivalry among competitors, to maximize net revenues or minimize net losses.

By Mr. Leisure:

Q. I think we discussed "pure competition" yesterday, and "perfect competition," and without wishing to repeat, I would like to ask you this morning to define "imperfect competition," as you used it.

A. When I used the term "imperfect competition," I had in mind a state of affairs in which there is absent one or more of the conditions that are assumed under perfect competition.

Q. Does the term "imperfect competition," as used by economists, imply collusion or agreement between sellers?

45827 A. No.

Q. Well, does the term "imperfect competition" mean the absence of competition?

A. It does not mean the absence of competition. It has to do merely with a certain expression of competition.

Q. Professor Grether, would it be possible to have a condition of pure or perfect competition in an industry such as described in the long hypothetical question which I gave to you yesterday?

A. No. As I indicated yesterday, I think perfect competition is such an abstraction that it could not at all be realized in reality. Pure competition is closer to reality, and might be very nearly achieved, but neither form could be achieved in the cement industry; that is, under the conditions assumed, I should add.

Q. In your experience as a teacher, is there any example of pure or perfect competition in manufacturing industry?

A. None that I could state.

Q. Professor Grether, does an economist expect that a producer in competing with other producers will or will not exercise self-restraint in his pricing policies?

A. When numbers are relatively small in a trade
45828 or industry—by that, I mean small enough so that the policies of any one firm have an appreciable impact or effect upon the policies of other members of the industry, it is of the essence of competition that there will be some restraint exercised, because if, for instance, a firm does not exercise a restraint, it will arouse retaliation from competitors. For instance, in so far as prices are concerned, it will develop a situation where a price war will be produced back and forth between the members of an industry.

Q. Well, if such self-restraint is not exercised under such conditions as you have described, and is thrown to the winds, what, in your opinion, are the economic effects which you expect?

A. The economic effects of the absence of restraint, as far as, for instance, the use of price policy is concerned, is, say, a price war, which would, if continued, push prices down to, say, below cost, or to zero, and I can imagine a case even less than zero, as a consequence.

Q. Well, if, Professor Grether, a producer in an industry exercises self-restraint in his marketing policy, then

does that or does it not, in your opinion, negative the existence of free competition?

A. It does not negative the existence of free competition, as I use the term.

Q. In your opinion, Professor Grether, or, rather, let me say, do you agree that the early practices of selling f.o.b. mill could not have been abandoned and the present practices of selling at delivered prices determined by the use of multiple basing points, except as a result of conspiracy and collusion?

45830 A. In my judgment, the multiple basing-point method of pricing springs so spontaneously out of the conditions of the industry that it could have arisen without collusion or conspiracy.

45831 Q. Will you also state, Professor Grether, whether or not such a method of marketing as described in the long hypothetical question facilitates the meeting of local fluctuations in demand?

A. In my opinion, it does, because it allows the mill to reach out into distant territory without great resistance.

Q. Now, assume, Professor Grether, that cement is generally sold at delivered prices, calculated with reference to multiple basing points, as described in my long hypothetical question, and that sales are sometimes made on a freight-absorbing basis. If one manufacturer abandoned the practice and sold his cement exclusively on a uniform f.o.b. basis, and all the other manufacturers continued their practice of meeting prices at various markets, from an economic standpoint will you give us your opinion as to what would be the result to the manufacturer making the change?

A. Now, as I understand the question, it is as follows: A manufacturer changes to the uniform f.o.b. mill system and other mills are on the multiple basing-point system?

Q. That is correct.

45833 A. If, say, a given mill went on a uniform f.o.b. mill basis, it would, by that act, give up its freight-absorbing sales. At the same time, it would not interfere, say, with the entrance of other mills on the multiple basing-point system of entering its market. The only way in which the mill might be said to compensate for that loss would be by its reducing its base price, if it thought it possible to reduce the base price low enough to keep other mills out of its market. Then, perhaps, say, it might keep

them out, but under the assumptions of the question there are a number of sellers at each point, and except in an isolated market, in my judgment, I do not see how a mill could reduce its base price low enough to exclude their competition. The result, it seems to me, would be that the mill would be pushing its prices down so low as to get
45834 below costs, and facing bankruptcy.

Trial Examiner Norwood: Well, what would the situation be in the case of a mill and its competitors both adopting this same method at the same time?

The Witness: If the competitors adapt their base prices at the same time with the f.o.b. mill, then the f.o.b. mill would be even worse off.

Trial Examiner Norwood: Wait. I am not talking about their dropping their price, but if they adopted the same system.

Mr. Leisure: The same f.o.b. mill method.

Trial Examiner Norwood: The same f.o.b. mill method; yes.

The Witness: The question that I was to answer, as I recall it, is that they were selling on the basing-point system.

Trial Examiner Norwood: Yes; there is one of them that adopted the f.o.b. mill method.

The Witness: Yes.

Trial Examiner Norwood: And the others remain on the basing-point system. Now, suppose that nobody remains on the basing-point system, but all of them adopt the f.o.b. mill.

The Witness: Yes.

Trial Examiner Norwood: What would be the situation?

The Witness: In my judgment, you would have to
45835 discuss that question in terms of a large number of factors that would have to be placed into the question. For instance, one would have to know the location of the markets, the number of the mills at a given point, the distance between the mills—in other words, he would have to know what I would call the configuration of a market, and the worst of it is, the market configuration changes with the—

Trial Examiner Norwood: Don't you have to know that to discuss the situation where one mill changes?

The Witness: Yes, but it is more complex, if you have a number of mills here changing at the same time.

Trial Examiner Norwood: All right.

By Mr. Leisure:

Q. Now, Professor Grether, will you assume that a new mill should be built, and instead of conforming to the existing industry marketing practices it sold exclusively on a uniform f.o.b. mill basis, while other competing manufacturers continued their present marketing practice—I think I have asked that question.

45836 The Witness: It seems to me the situation is practically identical with the one I just described; that it is a new mill would suffer a handicap, not being able to take freight-absorbing business, whereas, competitive mills would be able to come into its own area and take freight-absorbing business. Its only recourse would be to reduce price in the hope, perhaps, it might be able to exclude competition, which I do not think it would be possible normally.

By Mr. Leisure:

Q. Well, could a continuance of the pricing method contained in the long hypothetical question be the result of the independent actions of the various producers, in your opinion, Professor Grether?

A. In my opinion, yes.

Q. If such a pricing system as is described in the long hypothetical question were once established, would you or would you not expect that it could be abandoned except by collusive agreement or governmental order?

45837 A. I do not think it reasonable to assume it could be abandoned without some larger exterior influence like governmental order, or by collusive agreement, because the basing-point system under the conditions assumed arises so spontaneously out of these conditions and departures from it as already discussed by individual firms run counter to rational conduct on the part of those firms when they pursue their own self-interest.

By Mr. Leisure:

Q. If it were—following up the last question, if it were abandoned tomorrow, say, by the different members
45838 of the industry, would that or would that not indicate to you as an economist that there were collusion rather than the natural forces of competition?

A. I should think so, except for one exception; that is, that it might indicate that the whole industry overnight

had become irrational. That does not seem a reasonable assumption from the standpoint of behavior.

Q. Do you see anything in the continued existence of the basing-point method of selling which requires policing or enforcement on the part of the industry as a whole to retain such a selling method from an economic viewpoint?

45839 Trial Examiner Norwood: Now, do you understand from the basing-point system, the industry that is described in the first long hypothetical question?

The Witness: Yes, that is right.

Trial Examiner Norwood: The objection is overruled.

A. In my judgment, the basing-point method of selling as described in the long hypothetical question should not demand policing or should not require policing by the industry as a whole.

By Mr. Leisure:

Q. Let me ask you the following question, Professor Grether:

Assume that there is a general practice in the cement industry of mills quoting and selling only at delivered prices and of refusing to quote and sell f.o.b. mill.

Assume that some mills and some groups or clusters of mills are basing points and that some other mills are non-basing points.

Assume that delivered prices are the equivalent of base-point prices plus rail freight from base point to destination and that the lowest combination of base price
45840 plus rail freight determines which base-point price will govern at any particular destination.

Assume that when delivered prices are made as described the delivered prices of all mills become identical at the same destination and that non-basing-point mills match the delivered prices at particular destinations of the basing-point mills.

Assume that rail freight is ordinarily paid by the buyer to the railroad company; is then deducted from the face of the invoice and the balance paid to the seller.

Assume that the mill nets of each non-basing-point mill vary between its respective customers depending on the differences in freight to their respective destinations, higher mill nets being received from its nearby customers than from its more distant customers.

Assume, also, that when selling for delivery at destina-

tions governed by other basing-point mills the mill net prices of each basing-point mill also vary between its respective customers depending on the differences in freight to their respective destinations, higher mill nets being received from customers in territory governed by it than from customers in territories governed by other basing point mills.

Assume, also, that substantial shipments are being regularly made by basing-point mills into the territory governed by other basing points.

45841 Take all of those things together and then tell us whether or not, in your opinion, that corresponds to any sort of competitive method of pricing with which you have become familiar in the course of your studies and experience?

What is your answer to that question, Professor Grether?

A. Before I answer, I should make a comment or two. Two words here bother me just a bit.

I would interpret the word "correspond" to mean similar to. I would interpret the word "competitive" to mean not pure competition or perfect competition, but competition as one finds it in industry.

Trial Examiner Norwood: You mean you are changing the hypotheses?

The Witness: No, I am trying to interpret what the question means to me.

Trial Examiner Norwood: Yes.

By Mr. Leisure:

Q. With that interpretation, will you answer the question?

A. I think economic literature abundantly now indicates that similar methods of pricing are found quite generally in American industry, and in my judgment that in order to assume that these are not competitive you would have to assume that a large portion of the pricing practices of American industry are not competitive, and I am not prepared to do that. In other words, it seems to me

45842 that there are competitive methods of pricing in American industry that are similar to the method described here.

Q. Well, that being so, Professor Grether, will you tell us in your opinion are the marketing and pricing methods described in this last question consistent with the existence of free competition?

A. In my judgment, they are, yes.

Trial Examiner Norwood: Well, does that mean perfect—I mean, does that mean pure competition?

The Witness: No. It means free competition.

Trial Examiner Norwood: Imperfect competition?

The Witness: Yes, I might add that.

Trial Examiner Norwood: Free imperfect competition?

The Witness: Yes, free imperfect competition would be all right.

45843 Q. Now, Professor, I am going to take up the subject of trucking, and ask you a number of hypothetical questions which are based on the same fundamental assumptions but with certain changes or additions which I want to ask you to consider. These questions will deal with the discontinuance of trucking by one company and its discontinuance by competing companies with the inauguration of contract trucking and with the use of a premium charge for truck delivery.

Now, the common assumptions in all of these questions on trucking are as follows:

Assume that the most important customers of a particular cement manufacturer are its dealers and that dealers in any one locality are in competition with each other in the retail distribution of cement;

Assume that cement is usually sold at delivered prices; that a cement manufacturer, upon request, sold cement for delivery to trucks at an f.o.b. mill price; that a few of its dealers took truck delivery of cement, and that such dealers, from time to time, invaded the normal market area of other dealers of this company, and that these local dealers complained to the company and threatened to discontinue doing business with it.

Assume that a few of its dealers were able, through trucking, to deliver the cement at a lower delivered
45844 cost than competing dealers in the same locality, and that the latter complained to the manufacturer.

Assume that the great majority of this manufacturer's dealers were strongly opposed to truck delivery and urged it to discontinue sales for truck delivery.

Assume that another important class of its customers were the railroads, that they were dissatisfied with the traffic they were losing from truck deliveries and urged this cement company to discontinue sales to trucks.

Assume that the company's mill was equipped to load

cement in cars and that the cost of loading in trucks was usually greater than that of loading on cars, and further that loading on trucks had a tendency to cause labor dissatisfaction because of irregularity of shipping operations.

If, under these conditions, this manufacturer who had been making deliveries to trucks at an f.o.b. mill price changed his practice in any one of the following ways, i. e.:

1. By refusing to make such deliveries to buyers' trucks;

2. By refusing to make deliveries to buyers' trucks and in place thereof offered to make deliveries by trucks, either owned by him or by contract truckers, at the same delivered price as charged for deliveries by rail;

3. Continued to make deliveries to buyers' trucks but charged a differential for loading such trucks;

45845 4. Continued to make deliveries to buyers' trucks but charged a price equal to the delivered price as quoted for rail delivery.

To you, as an economist, Professor Grether, is such action consistent with individual action in the individual company's self-interest?

45846 Mr. Leisure: I will read the last part:

By Mr. Leisure:

Q. To you, as an economist, is such action consistent with individual action in the individual company's self-interest?

A. Yes, I think so, and for three reasons, primarily; one is the assumption that the great majority of dealers were strongly opposed to truck delivery. It is, I think, quite normal for a manufacturer to react to the demands of a majority of his customers especially if they are important dealers. The second is the attitude of the

45847 railroads. The third is the increased cost of the truck method of shipping.

Q. Now, Professor Grether, under the same assumptions as stated in the preceding question, if this manufacturer, after having changed to one of the four alternatives stated, should thereafter change to another of those alternatives, or revert to his original practice, to you, as an economist, is such action consistent or not consistent with individual action in the individual's self-interest?

A. It seems to me to be consistent. It is quite the thing, it seems to me, for a business enterprise to experiment with its policy until it strikes the best policy.

Q. Upon the same assumptions, Professor Grether, as stated in the original question on trucking, if the manufacturer competing with the manufacturer who has adopted one of the mentioned practices should in their turn adopt the same practice, would such action, to you as an economist, raise any inference of collusion?

A. Not in itself for two reasons. In the first place, it is quite common for business enterprises to imitate each other; if one firm puts in a policy and it is success-
45848 ful, competitors copy. In the second place, and more important, this other company is influenced by the same considerations, I assume; its dealers, likewise, a majority of them would want, say, this policy.

Q. If one of these competing manufacturers should thereafter again change its practice to one of the other alternatives stated in the original question on trucking, and thereafter the other competing manufacturers should adopt the same practice, will you state whether or not, to you, as an economist, that action would raise an inference of collusion?

45849 A. It seems to me quite reasonable to assume that there might be considerable jockeying, experimenting in the trade, until some firm struck the method that produces stability in policies between firms.

Q. Now, assume, Professor Grether, that cement is a homogeneous commodity; that it is usually sold at delivered prices; that it is a heavy and bulky commodity, so that freight is an average of approximately 25 percent of the delivered price; that there are a number of manufacturers offering to sell at each destination; that the buyers, including dealers, contractors and governmental officials, are well informed on market conditions and prices; that each manufacturer is constantly and immediately informed by his salesmen and customers of the prices being quoted by all of his competitors; that the capacity to produce by the manufacturers is in excess of the current demand.

And assume that there is no agreement or understanding between the manufacturers as to the prices they will charge, but that each manufacturer determines his own price independently for himself, and that such prices are the result of free competition.

Would you expect, Professor Grether, the openly quoted prices at any destination to be generally uniform or
45850 different?

45851 A. I should expect the openly quoted prices to be generally uniform.

Q. You used the word "price" in the preceding question and answer, Professor Grether. What do you consider is the price of cement?

A. In this situation I had in mind the delivered price.

Q. Well, when you say "price" in that case, does it include the cost of transportation or freight, or does it not?

A. Yes, it includes the cost of transportation.

Q. Well, is this principle of the tendency of price
45852 to become uniform which you have just discussed in any market for a standard commodity applicable to delivered prices under the basing-point method as described in the long hypothetical question?

A. Yes, I think so.

Q. Assume, Professor Grether, cement is a homogeneous commodity; that it is usually sold at a delivered price; that it is a bulky and heavy commodity, so that freight is an average of approximately 25 percent of the delivered price; that there are a number of manufacturers offering to sell at each destination; that the buyers, including dealers, contractors, and governmental officials, are well informed on market conditions and prices; that each manufacturer is constantly and immediately advised by his salesmen and customers of the prices quoted by all of his competitors; that the capacity to produce by the manufacturer is in excess of the current demand;

And assume that the prices openly quoted by different manufacturers at the same place and time are constantly uniform.

Will you state whether the fact of such uniformity, to you as an economist, justifies an inference that such prices are the result of collusion or agreement, Professor?

45853 A. It seems to me there is no inference of collu-
45854 sion in the statement of the conditions.

Q. Well, Professor Grether, will you state whether or not you would expect such uniformity of price for homogeneous products irrespective of the method of quoting prices employed?

A. Yes, I should.

Q. Will you explain your answer, please? Why would you expect it? For what reason?

A. Why, I should expect a uniform price for a homogeneous product irrespective of the——

Q. Pricing method?

A. Irrespective of the pricing method, because buyers inevitably are going to buy at the place where they can get the lowest price, and when you have an orderly system of marketing the buyers will be able to judge the situation, and inevitably under those conditions you are going to have a uniform price established.

Q. And will you state whether or not the facts that prices are known to competitors, and the fact that an orderly method of quoting prices is employed, any tendency in your opinion, as an economist, to produce such uniformity of price in the case of a homogeneous product?

A. Yes. I did not state that, but that is assumed, that the sellers make their adjustments promptly, are forced to in competition.

45855 Q. Professor Grether, in the case of cement sold the way that we have described in the long hypothetical question, where is the market for cement, in your opinion?

A. The term "market," like so many other terms in the economic literature, has a number of connotations. Now, the most accepted usages, in my judgment, are two sorts; one is you speak of the market as the area through which the supply-and-demand relations play. You notice that is an area concept. The other is, you speak of the market as a center at which the supply-and-demand relations focus, that is a center-concept.

Now, if you take the first concept, the market area influences supply and demand for cement very likely is a world market; that is, I suspect there may be a general play of influences even from export centers in normal times. When you take the second concept of market centers or focusing points, then the market is wherever buyers and sellers meet. In other words, at that particular point supply-and-demand conditions happen to come to a focus in order to establish a sale. From that standpoint the market is at all those points where buyers and sellers meet for the purposes of trading. Now, I would assume the cement industry, especially, because you have a mass industry, that the market could be at a mill, but it will tend generally to be at the point of purchase or use of the product.

I might add, by the way, that business enterprises often use the term "market" somewhat differently;

45856 that is, a firm, when it speaks of its market, thinks in terms of trading area, therefore, from its standpoint it speaks of a specific configuration from which it gets its business.

Q. Well, when you stated, Professor, a moment ago that there was a tendency for a uniform price of a homogeneous product at a market at any one time, was it in the latter sense, the way in which these relations focus themselves throughout the area that you used the word "market"?

A. Yes, sir.

Q. Now, Professor Grether, I would like to have you assume that cement is sold at delivered prices determined by the use of multiple basing points, and that from past experience the manufacturers have learned that a reduction in price by one manufacturer is immediately met by others, and that he gets little or no increased volume but does get a lower price for his product.

Under conditions of free competition would you expect each manufacturer to make successive lower prices under those conditions?

45857 A. No; I should not expect each manufacturer, under those conditions, to make successively lower prices.

If it is proper, Your Honor, I should like to add that I agree thoroughly with you that an economist deals with individual and group behavior.

Q. Assume, Professor Grether, that on sealed

45858 competitive bids to governmental bodies experience has shown that the final award is made on the basis of total cost at point of use, including freight; that it has happened on a number of occasions that when on competitive bids one company bids a price lower than its competitors, the business is not awarded to such low bidder, but sometimes after such low bid is made public, all bids are thrown out and new bids are asked, when all bidders bid as low or lower than the original low bidder; and it has also happened that the governmental agency has permitted other bidders to reduce their prices without a new letting, either to meet the original low price or to make an even lower price;

And assume that it has happened that when a company

has bid on a competitive governmental letting a price less than its going commercial price at the destination in question, a competitor has usually reduced his commercial prices so that such reduced governmental price has often or usually been followed by a general reduction in commercial prices.

Can you state, as an economist, Professor Grether, on what basis you would expect the manufacturer to bid?

45859 A. I should expect a manufacturer generally to bid on the going commercial basis.

Q. If, under such circumstances on any particular invitation to bid, all of the bidders bid the going commercial price at such destination, does such uniformity of price, to you, as an economist, indicate that collusion exists, or is it compatible with individual competitive action?

A. It seems to me to be compatible with individual competitive action, because of the factors that we have discussed in the previous questions.

Q. If the Government asks for bids f.o.b. mill, will you state whether or not you would expect the f.o.b. mill price bid to be made with reference to the destination cost available to the Government from other sellers?

A. I should think so.

Q. If the f.o.b. mill bids were made up in this manner, taking into account the destination cost available to the Government from other sellers, will you state, Professor Grether, whether or not you would expect the desti-

45860 nation costs of the different bidders to be identical?

A. I should expect the destination costs to be identical, generally.

Q. Now, assume, Professor Grether, such f.o.b. mill bids on the destination cost to the Government of the different bidders are the same, please tell us whether or not such identity would, in your mind, prove the existence of collusion?

A. Such identity would not, to my mind, prove

45861 the existence of collusion.

Q. I would like to address your attention now, Professor Grether, to another subject matter, and I am going to take up with you the subject of diversions of shipments in transit by the buyers, and I shall ask you a number of questions based on the same general set of assump-

tions, with certain additions which I will direct your attention to.

The common assumptions in all of these questions on diversions are as follows:

Assume that a cement manufacturer usually sells his cement at delivered prices; that the great majority of his sales are to dealers; that a number of competitors are actively soliciting the purchasers of each dealer in the territory in which this company does business; that dealer good will is a valuable asset to this manufacturer.

And assume that this manufacturer sells in town "A" at a delivered price of $2 per barrel, on which sale he nets, after deducting the freight rate, $1.50 per barrel.

And assume that this manufacturer sells in town "B" at a delivered price of $2 per barrel, from which he nets $1.20 per barrel at his mill.

And assuming that in each case the dealer pays to the railroad the amount of freight and remits the balance to the manufacturer.

And assume that a dealer in town "B" orders
45862 cement to be shipped to that town, and after the cement is delivered to the railroad, the dealer diverts the shipment in transit to town "A," paying the railroad the 50 cents freight due for a shipment from the mill to town "A" and remitting to the manufacturer the $1.20 per barrel, which was the mill net due to the manufacturer on a shipment to town "B," so that this town "B" dealer now has this cement in town "A" at a cost of $1.70 to him.

Assume that this town "B" dealer now sells this $1.70 cement in competition with the manufacturer's customers in town "A" whose cement is costing $2.

And assume that the manufacturer's local dealers in town "A" complain to the manufacturer and in some instances threaten to discontinue doing business with him and the manufacturer adopts a policy of preventing such diversions.

Under the circumstances, Professor Grether, would you as an economist say, or would you not say, that this action is consistent with individual action in the individual company's self-interest?

45863 A. It seems to me that this action is consistent with the individual self-interest of the firms. A manufacturer is dependent upon dealers for business. If

the majority of his dealers object to a policy, he has to make up his mind whether he wants to lose the majority of his dealers or continue doing business with them.

Q. Professor Grether, making the same assumptions as contained in the original question on diversions, and adding the following assumptions:

That manufacturers competing, and that the company referred to also sold cement to dealers located in towns "A," "B," and elsewhere, on which they receive different mill nets;

That whenever a dealer buying from any of these manufacturers diverted cement to a destination at which that company had other dealers, that the local dealers complained to the manufacturer making such sales;

Now, if an individual manufacturer discontinued the
45864 practice of permitting diversions, would you, as an economist, say that this is or is not action consistent with individual action in individual self-interest?

A. It seems to me to be consistent with the individual interest of the manufacturer in his independent action, because of the same factors I have already discussed. They have the same problem whether they are or they are not going to hold the dealer business.

Q. Now, Professor Grether, making the same assumptions as contained in the last questions on diversions, and adding the following assumptions:

That one individual manufacturer discontinued
45865 allowing dealers to divert cement, and if other manufacturers discontinued permitting diversions in transit, will you, as an economist, tell us whether or not this raises any inference of collusion?

A. I think not, because it seems to me they would be forced into that policy by competition.

Q. If some manufacturers took steps to prevent such diversion and others did not, what, in your opinion, would happen to the dealer business of those that did not, Professor Grether?

A. I think, undoubtedly, that those who did not would lose the good will, and, therefore, the business of the dealers, if they did not adapt themselves to the interests of the dealers.

Q. Now, assuming, Professor Grether, as a fact that for more than 20 years cement manufacturers have generally attempted to prevent such diversions, I will ask you

whether or not that indicates, in your mind, that collusion exists, or is it equally compatible with competition between producers?

45866 A. In my judgment, it is compatible with competition between producers.

Q. Passing to another subject matter, Professor Grether, what are the economic factors that, in a competitive industry having the characteristics of an industry like the one described in the long hypothetical question, and in the absence of collusion, that tend to cause relatively rigid or stable prices?

A. A number of factors would be important. In my opinion, the most important would be the fact that—would be the presence of a relatively small number of sellers at any given point, and, therefore, an awareness of each seller that whatever he does would arouse a retaliation on the part of competitors.

Another consideration if present—another influence, rather, if present, would be a situation, say, where the total demand for the product tends to be inelastic, because, in that case, that makes the necessity for the retaliation even more marked, because there is no total expansion of the market by price decrease, and business must come from other members of the industry.

45867 Another situation would be, say, one where there is no tendency for supplies to hang over the market; in other words, where production is adjusted in the short run pretty closely to the market demand.

There are other groups of factors. I do not like to use technical verbiage here; I mean factors of an institutional character. For instance, if there are certain contractual conditions in an industry, that, if a manufacturer would agree that he would guarantee dealers from loss through price decline, that would affect his attitudes towards price reductions; or if it is the custom of the industry, say, to take care of customers when prices rise, so that on business outstanding they would not get the immediate benefits from price increase, that would affect the attitudes towards price increase.

Q. Professor Grether, I will ask you to assume that in the cement business most companies have outstanding large obligations on specific job contracts, and that all of these contracts contain a clause protecting against decline in

price, so that if the manufacturers' commercial
45868 market price at point of delivery declines, they are forced to reduce the price on the contract cement that they have agreed to deliver for a long period ahead.

Q. Would that factor have any influence to you, as an economist, on a tendency towards stability in price?

A. It seems to me that the presence of contracts
45869 of the sort you describe would tend to make for price stability, in the sense that they somewhat tend to inhibit price reductions, because the manufacturer would have an additional loss to offset any possible gain, say, from price reductions.

Q. Now, assume that most of the cement manufacturers have on their books contracts for delivery in the future over a period of a year or more of large quantities of cement, and the contracts stipulate a maximum price, so that in the event of an increase in the commercial price manufacturers do not get any advantage at all on that increased price on their contract obligations.

Would that, in turn, have any influence on the question of relative rigidity in price, in your opinion as an economist?

A. That, it seems to me, to some extent would tend to inhibit price increases, particularly if there were a large volume of that kind of business under contract.

Q. Now, will you assume, Professor Grether, that in the event of a price advance it is the custom of the industry to give several days' notice, broadcasting to the trade the effective date of such price advance, and that, coupled with that, it is also the custom to permit dealers to place orders within that period for all the cement for which they would take delivery within 15 days thereafter?
45870 Would those factors have any influence on the question of relative price rigidity, in your opinion?

A. That sort of trade custom, in my judgment, would tend to likewise inhibit price increase, and, therefore, make, to some extent, for price stability, because the manufacturer would not get the benefit of price increase for at least a brief period. In other words, you tend to have the business come in in large amounts for a small number of days there, and then you have, following that, a period in which the slack is taken up.

Q. Now, Professor Grether, will you assume further that it is the custom in the industry to protect the dealer on

price declines on cement recently purchased, either in transit or just received, so that on such declines substantial credits have to be given to all recent shipments? Would this have any effect, in your opinion, on stability of price?

45871 A. This custom likewise, it seems to me, would tend to some extent to act—to inhibit price reductions.

Q. And will you assume further, Professor Grether, that certain companies have each a number of mills, and that the territory in which each mill sells reaches to and contacts the territory in which another mill owned by the same company sells, and that a company operating such a series of mills has found it necessary to change its price base at each of its mills, if the price base at any one mill is to be reduced.

Would this tend to have any effect upon stability of price, in your opinion?

A. I should think that that situation would tend to make for stability of price also.

Q. Will you tell us whether or not the fact that prices in the industry are known to all competitors tends to create rigidity of price, or do not?

A. I should think so, again, particularly under the situation where we have a small number of sellers, a relatively small number of sellers, competing at any one point.

Q. Are there certain factors in an industry, such as this, which tend to restrict price increase, Professor Grether?

45872 A. There are, no doubt, a number of factors.

For instance, every industry, I think, is faced with the influence of the competition of substitute products, and I assume that, for many purposes, there are substitutes for cement. If so, that tends to restrict price increase.

Likewise, almost every industry has the problem of potential competition; that is, whether or not the practice of the industry might lure more competitors into the industry, and a high-priced level here, it seems to me, and in other industries, would tend to act as a bait to bring other enterprises in, and I think, quite commonly, business firms may be expected to take that into consideration in their price policies.

Then, there is the fact, from the standpoint of the nature of this system as described in the first question, that in-

creases in the price level tend to make competition more keen at each point, because it enlarges the area to which freight absorption becomes possible, and I assume, therefore, increases the number of sellers at each point.

There are also the contractual factors and customary factors, that we mentioned, that tend to operate in the situation, like the custom, say, of giving advance notice of price increase, taking care of customers on specific job contracts—

45873 Q. Assume, Professor Grether, that the results of price reductions at certain times in prior years, as during any price war, have shown that frequently a price reduction by one producer may not only be met by competitors, but that they, in turn, quote a still lower price. Would this have any effect on rigidity of price, in your opinion?

A. I suspect strongly that if one could measure these things, that that probably would be the most important influence of all. You would definitely know that that would be the outcome, generally.

Q. Now, assuming the same conditions as are shown in the long hypothetical question, and assuming that during the period subsequent to 1933 the quoted prices of cement in some sections of the country remained unchanged for a period of five years, with exceptions of changes due to variations in freight rates, does that fact of rigidity of price to you, as an economist, raise an inference of collusion?

A. May I ask was that from five years after 1933?

Q. Yes; subsequent to 1933.

A. Yes; and for some sections of the country?

Q. Yes; that is correct.

A. That situation, in my opinion, does not justify an inference of collusion.

I think there is one detail of that that is rather
45874 interesting, and that is, except for a dip in 1937, and going over to 1938, that was a general period of price increase, as indicated by the wholesale price index of the Bureau of Labor statistics, and one would normally expect to see, if there had been collusion, it would have raised the price along with the general movements upwards.

Q. In this industry, taking the facts as stated in the

long hypothetical question, one in which you would expect active price variation, Professor Grether?

A. If by "active price variation" you mean frequent price changes, I would say no, one would not expect frequent fluctuations in prices in this industry.

Q. And do you think that this method or system, as it has been described, would facilitate the maintenance of rigidity of prices?

A. That is a rather difficult question. You see, in my opinion, the system arises out of conditions in the industry, and, therefore, the background and considerations are the conditions of the industry, you see; and when you come to a particular pricing method it seems any other method would, in itself, likewise, under the conditions of the industry, show considerable rigidity.

Q. Having in mind the character of the product, would the demand for cement be an elastic or an inelastic demand, as described by economists?

45875 A. It seems to me the demand would tend to be inelastic, and by "demand" I mean the total demand.

Q. Professor Grether, does the condition of inelastic demand in an industry have any effect on a tendency towards rigidity of price?

A. Yes; particularly if at the same time you would have the situation of a relatively small number of sellers at a given point, because a reduction of price then would shift business between firms. If it does that, say, it must come from other firms rather from an expansion of the amount of business in a market. If you have an elastic market, a firm may very well say, "We will take a chance because we would all get some benefit," you see.

Trial Examiner Norwood: But how does the elasticity of demand where it converges on a mill compare with the elasticity generally as it converges on the entire industry?

The Witness: I am quite prepared to push that. It goes into a technical field of economics. We make a distinction in recent years between the demand of an individual firm and the demand in an industry, or for the commodity class as a whole.

Now, under the conditions assumed, here is an industry where you have a high elasticity of demand between firms.

45876 That is where a slight variation in price would shift the business. In fact, I suspect it is practically infinite. We put it, technically, that the curve would

be almost a straight line, with all having to sell at the same level. That is the sort of thing we have been discussing constantly.

Trial Examiner Norwood: That is the kind of elasticity between mills?

The Witness: Yes.

Trial Examiner Norwood: As between sellers.

The Witness: Yes; except so far as modified by location factors.

Trial Examiner Norwood: Yes.

By Mr. Leisure:

Q. Passing on to an entirely different subject matter, Professor Grether, I am going to ask you to assume that in the cement industry a large majority of the cement is sold to dealers, so that dealers as a class have been characterized as the backbone of the industry, and I will ask you to assume further that some manufacturers offer to dealers some marketing practices that would seem to dealers more advantageous to them than the practice formerly followed by this manufacturer, or by his competitors, such as more favorable discounts or the classification of business, that gave the dealer a larger proportion of the manufacturer's business than other manufacturers were giving him; and assume that dealers in cement are rela-
45877 tively similar in type; that is to say, that there is very little variation in the retail trade structure.

Can you state what would be the economic result to another manufacturer who did not change his practice, so as to give at least equal advantage to his dealers?

45878 A. Now, it seems to me that the economic result
45879 to another manufacturer would be that he would lose dealers heavily, and might lose all of his dealers, and I base my judgment upon three assumptions, particularly, that the larger proportion of the business goes through dealers, that the practice is more advantageous to dealers in actuality; at least, I think so; and also—and I think this answers the objection just raised, perhaps—that the dealers are similar in type, and may be expected, therefore, to react in just about the same way.

By Mr. Leisure:

Q. Under the assumptions just stated, Professor Grether, would there be any pressure towards uniformity in all such trade practices, from an economic standpoint?

A. Yes; I expect so, and I think there is probably abundant evidence in the American marketing system of that situation.

Q. Assuming marketing factors, such as discounts, classification in business between sales to dealers and sales direct to consumers, and so forth, are uniform as between competing manufacturers, does such uniformity, to your mind as an economist, indicate the existence of collusion?

A. No; not in itself.

Q. Professor Grether, in your opinion as an economist, would any of these methods of marketing be practicable in a heavy industry, such as the cement industry—and when I say "these methods," I am referring to what the record already shows—central exchanges, zone prices, postage stamp prices.

45882 A. I think I shall discuss this in reverse order, if I may.

I understand by "a postage price system," one under which you have uniform rates covering the entire country. Now, in my judgment the postage price system could not be a practical method under competitive conditions in the cement industry. It could be a method only under Government subsidy, and my reason is that with the cement mills distributed as they are throughout the country, and with freight such a significant proportion of the total

45883 price, it would be utterly uneconomic and utterly impossible, competitively speaking, for a postage stamp system to arise. When I say "uneconomic," I mean merely you would have cement going entirely across the United States at the one price, just like a letter does.

By "a zone price system," I have in mind the situation where you have a uniform, a delivered price throughout merely a portion of the country, say, not throughout the entire country. Now, I do not see how a zone price system could be practicable if the zones were broad, because there would be too much trouble at the breaking points. In fact, I think there would be so much trouble it would be impossible to maintain that system, but if they—I can imagine a situation where there might be a certain market configuration where for a portion of the market one could have a zone system with narrow belts or bands, which I think would look very much like the price structure then surrounding the existing base mill.

The question of the central exchanges is the sort of

thing about which one could talk for a long time. In fact, I am inclined to believe that popularly, and sometimes this is true of economists also, there is an attempt to overglorify conditions and results under the central exchanges. Now, a central exchange, as a marketing institution, arises when there is a large volume of business, and when there are large numbers of buyers and sellers dealing in a standardized product. When there is such a large volume
45884 of business it often saves time and is less expensive, say— Do you want this (addressing Mr. Paulson who has stepped up to the witness chair, and offering a paper to Mr. Paulson)?

Mr. Paulson: No, go on.

(Mr. Paulson returns to Counsel table.)

A. (Continuing.) I merely made some notes before I started talking.

It saves times to bring the buyers and sellers together at a central point and to allow them to so buy and sell under rules of the exchange. This sort of thing I could push at length because I made somewhat of a study of it; that is, you have had a great many devices of this sort used around the world when the conditions are proper. In order to have a demand and reason for an organized exchange there has got to be heavy volume of trading in the commodity at the point, either that or heavy speculative interest.

Now, sometimes people overlook the fact that on some particular exchanges the chief interest is speculation. For instance, on the Chicago Board of Trade less than one per cent of the futures contracts ever are fulfilled by delivery of wheat. In other words, the chief role of the exchange there is speculation and not a merchandising role. I do not mean to imply that there is no trading there also on the commodity, but that the essence of what takes place there is those speculative transactions.

45885 Now, as to that speculative type of transaction, I do not think that there would be the demand for it under the conditions as assumed, in the cement industry, and if there were, that there might be somebody who would open the question as to whether or not it would be desirable.

Now, to go back to the idea, to the use of the exchange as a place in which, say, the actual goods are bought and sold, not as a speculative center. To have an organized

exchange so demanded and used, you would have to have a large number of buyers and sellers at a given point. Now, the buyers of cement are scattered throughout the country. They are not necessarily at the mill, nor necessarily in a given city; likewise, there are only relatively a small number of mills at any given point, and those mills as large-scale producers are forced to go out and take their business where they find it, and that is a scattered type of market which they are serving, and so the presence of an organized exchange in a place like Chicago, New York, or any other place, would not take care of the problems of serving those customers out in the scattered markets. You still have a problem to meet. Take on the wheat exchange, there is trading in wheat all over the country, as well as on the organized exchange.

In my judgment, if you had an organized exchange for cement, the volume of trading in that exchange would be so low as to make the whole system break down for
45886 lack of custom, or perhaps I might add this condition, that most likely the volume would be so low that you could not use the method that probably is in the mind of some people whenever they think of this. You probably would have to use the call method where traders get together perhaps once a day, and see what the price would be, and, by the way, when that happens it does not mean the price fluctuates widely, the price may hold for days when the call method is used, if the conditions are such as to produce a stable price.

Now, to go back to the question, in case I wandered too far, I do not think that there is a place in the conditions of the cement industry for a central exchange as a market device.

By Mr. Leisure:

Q. And, Professor Grether, how would you, as an economist, approach the problem to determine whether or not competition had been lessened?

A. You mean in general, now, and not with reference to this industry?

Q. I am going to ask you to bear in mind the long hypothetical question and answer the question with reference to that, if you can.

45887 A. I suppose I am like every other economist. I always have to stop and think about the words and their meaning.

Now, in this case we have the word "lessened," and what it might mean. Now, to get a basis for judging whether competition would be lessened, you might, I suppose, look at this thing historically, that is, every time competition had become less something or other by contrast with the previous condition. Now, it might be possible by historical analysis, perhaps, to do something, but I doubt it very much, especially because under the assumption of that question this particular pattern of procedure has been in effect a large number of years now, and I think it would be very difficult, say, by historical analysis, to establish the facts.

Now, another possible procedure would be, say, to compare the cement, or, rather, the industry assumed in the hypothetical question with some other industry. As a matter of fact, that probably could be, might be useful if economics had gotten far enough along so we could measure something that was more or less imponderable, but unless you could find an industry in which you had exactly the same conditions you have a certain number of variables there, you see, that would create a difficulty.

The simplest procedure, and this, by the way, is why economists do this, is to think of the problem in any industry in any given situation by contrast with the hypo-
45888 thetical conditions of perfect and pure competition, but that sets up an abstraction, so to speak, to which one looks in order to judge a thing, and so that would be one possible procedure, but it does not fit the conditions of the industry, since I have already indicated you cannot have the conditions of perfect and pure competition in the industry.

To come back to the question, if I have rambled again, it seems to be very difficult to answer or to get a measure or to get proof as to whether or not competition, say, had been lessened in the industry.

45889 Q. Do you consider, Professor Grether, that comparing the present method with other methods of competition is one way of determining—what other methods of marketing is one way of determining whether or not competition has been lessened?

A. Yes, that would be another possible procedure, yes, to try to work out the results under alternative methods, and I imagine that would be the most useful procedure under the conditions here.

Q. Well, then, Professor Grether, if sales were made f. o. b. mill but not at a uniform price, what would you say as to whether the resulting delivered costs at varying mill prices would closely resemble the present method of delivered prices and the basing-point method as described in the long hypothetical question?

45890 A. I should think that the variable f. o. b. system would rather shortly settle down to the pattern of the multiple basing-point method of marketing as mills reached out, say, in competition with mills in other territories.

Q. Assuming, Professor Grether, that the cement industry has for many years been operating on a delivered price basis as described in the long hypothetical question, how, in your opinion, would it be possible for the industry to go over to the uniform f. o. b. mill basis?

A. I think to some degree I have touched upon this at another point. If you assume rational behavior in
45891 the industry, it seems to me you could not have this transition made without agreement in the industry, or by, unless it also might be made by, say, Government authority, I suppose, under legislation or some other way by Government authority.

Q. If it were done by Government authority would there be any necessity for placing limits upon the amount of freight absorption, in your opinion?

A. I think I must have misunderstood the question? May I go back a bit?

The Witness: May I have the previous question?

Mr. Leisure: I will withdraw that question, and read the original question, please, and let the Professor hear it.

Trial Examiner Norwood: Read the previous question.

(Question read as follows:

"Q. Assuming, Professor Grether, that the cement industry has for many years been operating on a delivered price basis as described in the long hypothetical question, how, in your opinion, would it be possible for the industry to go over to the uniform f. o. b. mill basis?")

45892 A. Yes, I have answered that.

By Mr. Leisure:

Q. I withdraw the other question.

If you have delivered prices in an industry, would you, as an economist, expect that such delivered prices would follow any pattern, Professor Grether?

A. Yes, I should think almost any practice once it becomes employed will develop a pattern of some sort.

Q. Professor Grether, assuming that the cement industry sold on a uniform f.o.b. mill basis, what do you consider would be the economic effect of such a marketing method on the marketing area of each producer?

45893 A. The effect of a uniform f.o.b. mill system would be to restrict the marketing areas of the various mills at various points because they would not be able, under that system, to reach out through freight-absorbing sales. Now, the kind of restriction, extent of markets, would vary widely with the conditions one finds scattered throughout the industry.

By Mr. Leisure:

Q. And what would be the effect, in your opinion as an economist, of such a marketing method on prices?

45894 A. It seems to me that one should have to distinguish between initial and long-run effects on price in this case. Now, the initial effect, I think, might be highly variable depending upon the location of demand and in relation to given mills, depending upon the number of mills at a given point; the spacing of mills, and so on, and I can think of one or two cases relatively clear-cut. If you had, say, an isolated mill, that is where they are somewhat remote from competition, that mill, I think, would quite likely be able to have a higher price—would have a higher price because of the absence of competition in its own market under the uniform f.o.b. mill system. If you have on the contrary a market where there was a large number of mills at a given point and, say, relatively small demand, for instance, in that area, then, say, in that area, if for that area, there is not enough volume to support the mills you either have them, say, operating at a very low rate for a period until finally they can't support their net capital basis, or they get into a price war and

45895 put the price down, say, to a point where they won't be able to cover their full costs. Their hope would be that they would be able to reach out and get enough volume to give them a cost coverage. Now, whether that hope would be justified would depend upon the configuration of the market.

Now, if one moves from this level, say, of possible short-run effect to long-run effect, then I should think some of

the following things might—not only might but would be expected to occur. In those areas, say, where the mills were located because of heavy demand, sufficiently supported mills, the high profits,—at least good profits,—would act as a magnet to attract new capital in those areas, so you would have an increase, say, in capacity in those regions and contrariwise in those regions where there was not an adequate local demand to take care of existing facilities, I would expect that either the absence of volume at given prices, or the price war that might develop would mean that some mills be forced into bankruptcy, but before you get the full effects I think you have this situation to keep in mind, and that is that a mill in bankruptcy is not necessarily out of production for a period, someone might buy it up at a low price and keep it going for a period, but eventually it seems to me you get to a condition where some of the facilities would be forced out of production in those areas.

45896 Now, it is a bit difficult to predict total net effect for the industry in all things. But I should think that there is a strong presumption, to say the least, that the total net effects would be higher total average factory costs of production, and, therefore, over the long period quite likely higher total prices.

Trial Examiner Norwood: Well, that depends on whether or not the prices are reasonable, based on cost plus fair profit, and so on, at the present time, or at any time that you wish to adopt as a basis of comparison?

The Witness: Yes, Your Honor, that is why I used the terms "in the long run" decidedly, on the assumption that that sort of result would tend to be established in the long run.

45897 Q. Professor Grether, I am going to ask you another hypothetical question, with a number of assumptions.

I will ask you, first, to assume that all mills are selling on the basis of uniform mill net, and that there is a large demand in a particular mill's market territory due to a large Government project, and to assume further that that mill, after reserving a sufficient portion of its capacity to fully take care of its commercial customers, is able to supply only a portion of the cement for the Government project, and to assume also that the balance of the amount required by the Government project has to be secured from a more distant mill.

What would be the effect on the total cost of the project to the Government, in your opinion as an economist?

45899 Trial Examiner Norwood: There is nothing in the evidence to base that assumption on; is there?

Mr. Bond: We have in the evidence plenty of cases where the mills from a distance did absorb freight in order to get into competition at a certain point. Now, under this other method, they would not be able to do it. What is the effect, then, on the Government's cost where the local mill is unable to supply all of the cement required?

Mr. MacIntyre: If Your Honor please, Mr. Bond

45900 still has not met the objection in any way that I raised, and that was just this, that it is indefinite, it is vague, and it is the same thing as asking a question like this: If two automobiles that are fast are coming down the road, and one has to make a turn, which one will arrive at point "X" first? We do not have the speed of either automobile, or what the distance is, and if we had that information it would be an answer for a mathematician and not one for an economist to give.

Trial Examiner Norwood: You might get the answer, at that.

Mr. MacIntyre: Without knowing which run could run the fastest.

Trial Examiner Norwood: If one could make the turn and the other could not.

Mr. MacIntyre: If both ran the same distance.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: At the same speed?

Trial Examiner Norwood: Yes.

Mr. MacIntyre: And over the same mileage?

Trial Examiner Norwood: Well, I think on the basis of that discussion I will sustain the objection.

Mr. Leisure: I offer to prove that the witness would testify, if allowed to do so in response to the question which I have just asked him, that the Government would

45901 be buying cement at two prices, the price close to the mill and then the higher price from the more distant mill, and that if the f.o.b. mill prices are the same as the basing-point prices then the total cost to the Government would be increased because of the higher price paid to the mill farther away.

Q. Professor Grether, what do you mean by the term "overhead costs"?

A. By "overhead costs," I mean costs which do not vary directly with the output. I might say that normally I use the term "fixed costs," but it is quite common to use the term "overhead costs" this way.

Q. Can you tell us whether or not it would be true that the greater the plant investment required relative to the unit production cost, the higher the overhead costs? Is there any such relationship?

A. Yes.

Q. What effect, Professor Grether, if any, does a high overhead cost have on the marketing policies of an industry such as this?

A. If there are high overhead costs, then the firm involved has every incentive to try to increase volume, because, as volume increases its total until costs fall.

45902 Conversely, it has to worry about a decrease in volume, because, if there is a decrease in volume its total unit costs rise; so it worries a great deal about its market position.

Q. Do you, Professor Grether, draw any distinction between meeting competition and matching prices?

Mr. Leisure: I am now referring, Mr. Paulson, to page 15640 and following of the record.

A. When two or more firms, say, meet in market competition, and if they are selling a standardized product, then, in competition, their prices will be uniform. Now, from the standpoint of words used, you might call that, perhaps, matching the price, but it certainly is meeting the competition, because they are forced to come to the same point in ordre to get the business.

Q. Suppose, Professor Grether, you had a case where the base price at one figure were in effect on one side of a State line and a different base price in effect immediately on the other side of the State line and both of those base prices being put into effect by one base mill and recognized and observed and followed by its competitors, what competitive theory exists on which that would be explained?

45906 A. By the words "in what competitive theory," I would assume that that meant how would you explain it competitively this price situation.

Now, it seems to me quite reasonable to assume that a mill, say, in meeting competition, on these north and south sides could work out such a price structure. Con-

trary, if there were a general understanding in the industry more likely you would have a single price rather than a dual price structure.

Q. Assume, Professor Grether, that one producer of cement is quoting certain delivered prices in the 45907 area immediately surrounding his mill and a more distant producer comes into that marketing territory and quotes the same delivered prices for the respective points. Will you say that that was price competition?

A. Yes.

Q. Now, referring again to Mr. Wooden's long hypothetical question referring to the description of the cement industry contained in that question, do you, Professor Grether, as an economist consider that the price system there described is one that would tend to produce and intensify a depression in our national economy?

A. I do not think that this price policy could produce a general consequence of that sort in the American economy.

Q. Assume that in the summer of 1932 the base prices of cement in the Middle West were generally advanced 40 to 50 cents a barrel, and assume that at that time the demand for cement, and, therefore, the consumption of cement was declining and assume that in the period from 1930 to the spring of 1932 the base prices of cement had steadily declined so that throughout the Middle West the base prices of cement had declined from, say, $1.50 to 75 cents, and assume that at the base price of 75 cents all the mills regarded this as unprofitable.

Will you state to what extent you consider such an increase in price at that time as inconsistent with the existence of a freely competitive market?

45098 A. It seems to me that particular result is compatible with a free competitive market; as I used the phrase. It seems to me quite reasonable to assume that this might very well be an act of desperation on the part of some member of the industry who felt he would rather be out of business than taking business at this level and he, say, takes a chance and raises the price and the rest of the industry lead off—rather, follow his leadership motivated just about the same way.

Q. Well, do you consider that such a rise in price, as is described in the preceding question, is indicative of a power of control over price?

A. That depends somewhat by what one means "power of control over price." If one means by that, say, joint control, then I say no, but under imperfect competition the essence of imperfect competition is that each seller has some control over price because he can affect the price result.

Q. Professor Grether, do you consider that under the basing-point method of delivered prices, as described in the long hypothetical question, there is no market in the economic sense?

A. Well, that depends, it seems to me, on what one means by "market" in an economic sense. I have already discussed what I consider to be a market from the standpoint of economics and since I have already indicated rather clearly that this fits into my conception of an economic market or of a market in an economic
45909 sense.

Q. And do you consider, or do you not consider that this basing-point method, as I have already described it in my long hypothetical question, is an artificial method of pricing?

A. The answer to this question, like so many others, depends upon what one means by a word. I do not consider anything artificial that rises spontaneously out of the conditions in an industry.

Q. You do not consider it artificial, then?

A. No; I do not consider it artificial.

Q. I will ask you to assume, Professor Grether, that less than 50 percent of the sales of a number of basing-point mills were made on their basing-point prices, and that the remainder of their sales were made at
45910 lower mill nets, and some of them as much as 60 or 70 cents a barrel lower than their own basing-point prices. What, if anything, would that indicate to you, as an economist, as to the average level of such basing-point prices?

A. I do not think that that in itself is conclusive evidence as to the level. To be able to answer that definitely, one should have to know something about the structure of costs, that is, the relationship between fixed and overhead costs and variable costs in the industry.

Q. Do you consider that it is the essence of basing-point practices that there is cooperation tantamount to agreement?

A. This is another one of those situations where we worry about the meaning of words. If by those words one means that the mills in their policies watch each other and adapt themselves to each other—if that is what it means, I will agree; but if it means something more formal than that—joint control or joint agreement, then I would not.

Q. And to the same effect, you would consider that it requires mutuality of behavior on the part of members of the industry?

A. That is the same problem. You have mutuality of behavior in this sense, that one firm is watching another and adopting its policies to the other. You might have different policies under conditions enumerated there 45911 but you are bound to strike the same point eventually. Now, if you call that mutuality of behavior, just so one knows what he is talking about, it does not indicate to me that they necessarily have an agreement of any sort.

Q. Well, Professor Grether, do you consider that when a basing-point mill finds competitors selling by freight absorption in its market area, and makes no reduction in its basing price, that its behavior is like that of a conspirator and not like that of a competitor?

A. It seems to me it is a reasonable and rational behavior under the circumstances of the industry for the seller to act in this manner. In other words, I do not see in that any inference concerning conspiracy.

*Cross-Examination by Mr. Paulson.*

45912 Q. Professor Grether, do you hold a Doctor's degree?

A. Yes.

Q. On what subject did you write your thesis?

A. My thesis was entitled, as I recall it, "The Economics of John A. Hobson—A Study in Welfare Economics."

Q. From which university did you obtain that Doctor's degree?

A. From the University of California.

Q. What was your general line in that book?

A. That is a rather long story. Mr. Hobson was a dissident economist; that is, he stood outside the regular confines of economic analysis, so to speak, and differed.

say, with the traditional school. My thesis was an attempt to appraise his work.

Q. Did you reach any conclusions regarding his approach; that is, do you agree with him in the main? In other words, do you consider yourself a dissidant economist?

A. That is a nice little question. I have never seen an economist that was not dissident in some respects. That is, almost always we differ on something. If you mean by that that I am a "leftist," or radical, definitely no; but if you mean by that that I can see certain difficulties in traditional analysis; yes.

Q. But I do want to know from what general 45913 lines you depart and consider yourself dissident?

A. Well, that appears is simple to answer, but it is not so simple to make clear, perhaps. That is, I put myself in that group with most of the younger men that are trying to refine the traditional analysis, to make it a better tool of analysis; not only that, but to apply that analysis to problems realistically.

If I may continue, there are two types of economists, speaking very broadly—those that are interested in the development of the tools or apparatus of the profession, and those that are interested in applying those tools 45914 to specific situations. I try to think that I work in both directions.

By Mr. Paulson:

Q. Can you give us an example of where the older economists varied in that respect?

A. In what respect, now?

Q. In laying down standards for measuring—

A. That is not what I was talking about.

Q. I thought you said that—that you refined it so as to make it applicable and usable.

A. To make it clear, the tool makers and tool users.

Q. Yes.

A. And I like to think that I have some interest in both of these divisions. If you ask me to give a criticism of the development of economic doctrine to show the weaknesses in the kinds of tools used by economists, I am prepared to do it, but we will be here a long time.

Q. No; I believe this all very preliminary, as you shall see. I am about to ask you how far has the science learned

to use the tools developed? Is it in its embryo stage, or what?

A. The older tools were one thing. The newer refinements—and, by the way, by "newer refinements," I have in mind, just in one area, the field of imperfect competition. The newer refinements in that field are subject to a great deal of controversy and refinement. There is a new verbiage developing; the literature is chock full of
45915 it, that we are not agreed upon, as far as certain types of refinement are concerned; but my point is that that still lies in the traditional pattern. It is an attempt to make a better use of a sort of thing that has been done for a long time by making it more realistic, and also by being more aware of certain qualifications of distinctions that were not always clear in the past.

For instance, economists—

Q. Well, is it not in the nature of attempting to classify competition—this process that you are talking about?

A. I will put it this way: It is in the nature of working out types of competition.

Q. Yes.

A. You might classify the phenomena that affect types of competition, and work of that sort is going on.

Q. But in approaching that subject, don't you regard all industries, except those that are recognized as public utilities, as being competitive? Don't you start with that fundamental premise?

A. Well, I think one pushes back even further than that. In a very broad sense, all industry is competitive, as long as there is anything that substitutes for anything else. In other words, you must always take the position that there is no perfect monopoly; at least, it is extremely difficult to find such a thing. Therefore, it becomes a matter of infinite degree of variation from an abstract
45916 conception of a perfect monopoly, to the conception of perfect competition.

Q. Yes; but to work with, you have all the available knowledge of the industries in this country. Does that knowledge that you have include knowledge of collusive or cooperative arrangements within those industries?

A. I confess I do not know what you mean by that question.

Trial Examiner Norwood: Read it.

Mr. Paulson: Yes; read it. Maybe it will be clear to the witness.

(Question read.)

A. If you mean by that that in general do I know that sometimes there are collusive arrangements, I would say that is in my stock of information. If you mean by that, in any specific case, then that becomes a matter of factual knowledge. We would have to know the case, you see.

By Mr. Paulson:

Q. But do you assume for the purpose of making types out of the various industries that there are competitively—that collusive arrangements are absent; don't you do that?

A. Well, still I am a bit confused. May I inquire a little further—I am not trying to evade you.

Q. No.

A. I assume in an analysis that collusive arrangements are absent?

Q. Yes.

45917 A. Sometimes for the purpose of analysis one proceeds on the assumption that they are absent, to see what kind of results you get, you see.

Q. Yes. You look for the results and the markings surrounding an industry on the assumption that it is competitive, it is not a public utility, and then you have as you said.

A. See, it depends upon what level you are interested. If you are on the level of formal economic analysis, that is one thing. If you are on the level of research, that is another thing. I would like to know, you see, what you have in mind.

Q. Well, I am trying to find out, it just appears to me—I want to know if I am correct—that an economist would not have access to nor the time for the study of all of the records of conspiracies and collusive acts and cooperative activities that has been found, as a matter of fact, to exist in American industry?

A. No man could do that; that is right.

Q. I mean, did you in—have you surveyed all of those?

A. Why, no man could survey all of American industry.

Q. And you haven't surveyed all of those, then; you do not have all of those records in mind?

A. Of all American industry?

Q. Yes; all the conspiracy, collusive action, cooperative activity records?

A. I am not a superman.

45918 Q. You do not have them in mind, do you?

A. Well, that is beyond question.

Q. Well, you look at these—answer "yes" or "no," if you do or do not.

Trial Examiner Norwood: Answer with respect to the matter of the question.

Q. I am not trying to trap you.

A. Frankly, I am not trying to be obstreperous. It sounds like a foolish question. No man could have all the records of American industry in mind.

Q. I don't know. I think Attorney General Jackson has.

A. I dispute that very seriously.

Q. And several others.

Trial Examiner Norwood: As a matter of fact, you do not have them; do you?

The Witness: No.

Mr. Paulson: No.?

Trial Examiner Norwood: Well, that is what he wants to know.

By Mr. Paulson:

Q. And when you are looking at an industry, then, and trying to determine something about competition by looking at it, you never have the benefit of the record on cooperative action, or collusion, to find out how competition is modified in that industry?

45919 A. That is quite another question. If I am doing a piece of research, say, in an industry, I try to get all the evidence I can, to have on it, and if there is any indication, say, of agreement, that would be important evidence if I am trying to explain the behavior of the industry.

Q. Yes, but you have learned that competition behaves in certain ways; how have you learned that?

A. Well, you see, I have got to push back again. If we are on the level of formal economic analysis, we are rational—

Q. Yes.

A. —we do it on the basis of certain assumptions, because we have certain simple assumptions, we can do a

very pretty job of it, at least up to a point; we can have geometric patterns, all sorts of things.

Q. Isn't that the sort of analysis you have been applying here?

A. No, in part only; that is, we push forward to the geometric—it would be quite possible on the basing point system to push it that far, but it was something short, say, of complete.

Q. Go ahead with your answer. I interrupted you.

A. There was another part of the question I would like to talk about.

Trial Examiner Norwood: Read the question.

(Question read as follows:

"Q. Yes, but you have learned that competition
45920 behaves in certain ways; how have you learned that?")

By Mr. Paulson:

Q. Yes, that is what I wanted to know.

A. Well, say you have two levels, the formal level where your analysis is based upon assumptions. Now, how close those answers are to actuality depends on how close your assumptions are an actuality, and that is always an issue in our analysis, and the validity of analysis depends very definitely upon the validity of the assumptions, I quite grant that, you see.

Now, in the present stage of economic analysis, the attempt is to refine those assumptions, to bring them somewhat nearer to reality than to use something broad, very inchoate for purposes of analysis.

Q. That is one way. You said you had two ways.

A. Yes. Now, the other way is to take what I call the apparatus of economic analysis, and step out with research tools, statistics, for instance, you see, to get whatever evidence you can, and then you work in two ways, work deductively with your general apparatus; you work inductively with the research evidence you get, and they affect each other, you see. Sometimes you are forced to modify your deductive position, and vice versa, you see.

Now, I might add to that, that almost every economist has a certain field or two in which he is proficient factually, you see. That is, he is very apt to develop such a
45921 field and watch developments pretty closely, do formal research. Beyond that he has got to use his general formal analysis based on assumptions, you see.

Q. Well, have you determined to your own satisfaction that the type of market that has been described to you in the hypothetical question No. 1 is an inevitable type of marketing, or may it possibly be a grafted-on or superimposed type of marketing?

A. The position I took was that under the conditions assumed, that this type of marketing arose rather spontaneously from those conditions. In other words, I should expect to see it arise.

Q. No, that is not my question, however. Have you satisfied yourself—have you come to the place in your studies that given the number of mills, a number of men, and the number of buyers and the number of uses for cement, and the number of dealers, and everything that was given you there, that the method now described to you in the hypothetical question is inevitable; have you come to that conclusion?

A. Yes, pretty much in the bounds of those assumptions.

Q. Suppose you learned, then, that west of the Rockies that method is not used, east of the Rockies it is used; what would you say with regard to the situation west of the Rockies?

A. I would assume that there are some of the conditions set up, were different, or that perhaps the time period of competition might—

45922 Q. Well, I do not understand that. Now you say that given certain facts in the industry generally you are able to say that the inevitable thing that would result would be this type of marketing:

A. Well, for instance—perhaps I see what you are driving at, and I will try to be quite open.

One of the things that is in my mind is that markets are not isolated. Now, the Rocky Mountains do tend to isolate quite a few of the western markets, and the deserts do tend to isolate, you see, some of the western markets, and I should expect that quite possibly in that situation west of the mountains, and west of the desert, and with isolated groups of population, and transport difficulties, that you might find relations between shale, raw materials, mills, and demand, that might allow a different pricing policy to be maintained, you see.

Q. Well, then, you think that the existence of the geographic features are necessarily a part of the hypothesis?

A. Well, that all depends how you would wish to make a given condition clear; that is, isolation, in my thinking, I am thinking about isolated—

Q. Well, isn't it—

Trial Examiner Norwood: One at a time, please.

A. In my thinking about "isolated," is whether or not a mill is isolated from competition.

45923 Q. But you have said that it is inevitable in an industry that the men there will price in the manner that was described to you in the hypothetical question as being the one used by these cement manufacturers, given a certain set of facts?

A. That is, I should say—

Q. Now, if that would be for one it would be for all?

A. May I be allowed to explain what I mean by "inevitable"?

Q. Yes.

A. I mean by that that it is rational.

Q. Not inevitable but rational?

A. Well, if you assume—well, let us go back, to make myself clear.

Economic analysis implicitly is based upon assumptions as to human behavior, you see, and the basic assumption normally is a pattern of conduct in relation to some assumptions of rationality, you see, and we have very elaborate calculus, utility, on the consumption side, you see, and so on, and it is that sort of thing I have in mind, what would be rational for members of this industry in their conditions.

Now, I admit—

Q. You have spoken generally about the members of this industry. Now, I am assuming half of the industry does one thing and half does another. How do you explain from an economic standpoint how that comes about?

A. Could I be allowed to raise a question as to a 45924 matter of fact, Your Honor?

Trial Examiner Norwood: I think you should just answer his questions.

A. Well, the statement is that half of the industry. I would not think of half of the industry being—

By Mr. Paulson:

Q. I am assuming half of it is using the basing-point method, the other half is not.

A. To make that clear, to make it fit in my pattern of

analysis, I would assume if, in that half, if it is true, or whatever will suit your assumption, that there are some differences in condition from what I have—

Q. No differences in this construction of the mills, in the type of the commodity, in the number of buyers relative to the number of sellers in a given area, no such differences as to that difference.

A. I should think so.

Q. There are not, however. I am assuming that there are not. Then, can you see any reasonable explanation for one group one way, three-quarters, if you please, say, using one method, and one-quarter using another method?

A. That becomes a matter of fact. I would not expect to get, say, three-quarters using one method and one-quarter using another if those areas meet.

45925 Q. Now, then, if you found that situation you would suspect collusion or an artificial method in one or the other instance, would you not?

A. No, not necessarily.

Q. Well, given the same conditions, I am assuming the same conditions all the way through, and two different methods in use, you would then come to the conclusion, would you or would you not, that one is grafted and the other is natural?

A. It seems to me it is rather impossible to discuss that situation; that is, where you set up something that runs so counter to the conditions assumed here, you see.

Trial Examiner Norwood: Well, can't you answer that question without taking issue as to the possibilities of the assumptions?

45926 The Witness: If there were collusion I do not see why the collusion should take this form, that is another thing that is in my mind. I should think they could do a better job of it under the basing point system.

Trial Examiner Norwood: Well, do you think under those circumstances one would be a natural condition and the other would be artificial; if those conditions would exist, would that lead you to think one was artificial?

45927 The Witness: I suppose one might use terms "artificial" and "natural" in connection with collusion, even. This does not even sound like a natural collusion basis. It sounds like something so artificial that it does not make sense to me.

By Mr. Paulson:

Q. Which one sounds natural and which one sounds freakish?

A. The thing that sounds natural to me is the general situation of basing points except where you get changes in the assumptions like an isolated market, you see.

Q. You would then come to the conclusion that there is something not competitive about the other situation; is that true?

A. Well, I feel I should be allowed to object to reaching a conclusion about something that seems like a mutation to me, you see.

Q. Well, I thought you just got through telling us that you deal as stock in trade with assumptions.

A. All right, and you have given me a set of assumptions when I follow them through they give me different answers. That is all there is to it.

Q. That is what I want to know. What two answers do you get?

A. There is no answer on the basis of your assumption except to say something looks entirely irrational, incomprehensible.

Q. If it is not consonant—

A. Well, let us go back a bit, if I may. I began by stating that economists are interpreting behavior, and
45928 that applies to collusions and agreements as well as to individual behavior, and one would look at an agreement, see whether or not it would make sense, and I think if you are trying to judge whether there is basis for agreement under the conditions you state, I do not see that the agreement would take this form.

Q. Oh, I do not care to prove agreement at all, Professor. I really am only interested in finding out what you, as an economist, make out of those different situations, which is, if you please, imperfect competition, which is free competition, and would you expect that one is grafted and one is natural, or what there is, those two—

A. Well, my position is, I make an impossible question out of it, frankly. That is, you have assumed conditions that—I hate to repeat—look freakish to me unless the mills are isolated.

Q. In other words, you would not expect one member of the industry who is subject to the same circumstances as the other members to act differently; is that correct?

A. If you mean you have the same circumstances, my point is that I have indicated it I think a number of times in the record, that if there is an isolated mill, in other words, far enough removed, it might develop a different pattern or a price structure, and do it rationally. It would be all right for it, it would be the sort of thing that would be useful to it.

Q. Well, under this hypothesis, do you see how
45929 any cement mill can be isolated?

A. Under which hypothesis?

Q. Under the hypothesis in the hypothetical question No. 1, do you see how any—

A. No, my reply to your question is that to get the results that you posed, one would have to bring in this other assumption of certain amount of isolation of mills.

Q. I notice that you had no trouble in dealing with the hypotheses wherein it was stated to you that the industry is on a basing-point system for some 90 percent of the destinations and on a non-basing-point system for some 10 percent of the destinations. Wherein do you see the difference?

45930 Trial Examiner Norwood: Do you recall that statement that the Counsel is referring to?

The Witness: No, I do not.

45932 Q. Well, that is what the other—that is what causes,—I understood on direct you to say that is what causes the other pattern to come into existence, was the will to meet competition. Why doesn't it bring in just one pattern here? Why does it not bring in two or three?

A. Pardon me, you are paraphrasing. I nowhere said there could be only one pattern in the industry. In my position and elsewhere, I think is consistent, that one must analyze under the conditions present in a given situation to understand the results, and that in general the conditions assumed, I think the multiple basing-point system method of quoting prices is a reasonable outcome.

Q. And that the method of using arbitraries is not reasonable?

A. No, when you get foreign competition.

Q. With this particular method described?

Mr. Porter: Let him finish his answer.

45933 A. When you say at one point you must meet competition of a different sort than at other points, I would expect the system to be modified to meet the competition, or when, say, at some other point you have a com-

limation, for instance, of mountain and desert that isolates a seller, or sellers, you might get a different method.

By Mr. Paulson:

Q. It may be any number up to twelve or fifteen different types of competition you would find in an industry with these given qualifications?

A. That is a different matter. I can conceive twelve or fifteen different general types; I can conceive an infinite number of what I call configurations of the market.

Q. Then, the one type, the basing-point method type, is not really any more natural than the other type, is it, under the given set of circumstances?

A. If, say, the given set of circumstances were not typical of the industry, then I would not expect the basing-point system to become typical.

Q. But this given situation—I am sorry; have you finished?

A. If the conditions assumed were not typical of American industry, then I should not expect the basing-point method to be the typical outcome, and when those typical conditions varied we would have another outcome.

45934 Q. Suppose you found arbitraries where there were no ports and no effects from foreign competition, would you suspect that there was collusion there, then? Considering that you say that the basing-point method is "a natural," do you consider that the establishment of arbitraries—that the existence of arbitraries is evidence of collusion?

Mr. Leisure: I object to the question on several grounds. It is argumentative, highly argumentative. It also states an hypothesis that does not exist in the record, and unless it does exist in the record I think it is not beneficial.

Trial Examiner Norwood: Overruled.

Answer the question.

The Witness: May I have the question again, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. I could not answer that question, not knowing the sources of the arbitraries, as to why they were put in.

By Mr. Paulson:

Q. That is what you are here for, as I understand it, Professor—to help us determine whether these conditions evidence competition or something else.

Now, I am asking you again, to see if you can give us some light on it.

Mr. Leisure: I object to the preliminary remarks to the question. The general question is argumentative—

45935 to give us some light on it. I do not think that is sufficiently definite.

Trial Examiner Norwood: Objection overruled.

Answer the question.

The Witness: Your Honor, I cannot answer that question without knowing the sources of those arbitrary prices. In other words, what are the conditions—

Trial Examiner Norwood: Can you say whether those conditions would exist under conditions of competition or whether they would exist under conditions of no competition?

The Witness: If you mean it is possible to assume that collusion could produce an arbitrary price structure, I think one could assume that, but I should still want to know the conditions, to see if that was a reasonable outcome.

Trial Examiner Norwood: Then, if you could see these arbitrary prices, it would not mean anything, either way?

The Witness: I think I should know more about it.

Trial Examiner Norwood: Yes.

The Witness: That is right.

Trial Examiner Norwood: With competition or with no competition.

By Mr. Paulson:

Q. What else do you have to know, Professor?

45936 A. Well, I don't know. I was given certain conditions here upon which I reasoned. If you want to vary those conditions, I will attempt to reason, if I can make sense out of it.

Q. I am not varying them.

A. Just a minute. You have given me the result—

Q. Finish your answer.

A. You have given me the result, not the conditions, you see. You ask me to interpret the results, without knowing the conditions that might have produced that result, you see.

Q. But I read to you from the long hypothetical question, which you were able to answer, that Mr. Leisure put to you; I read to you the second page of it, and asked you

to explain the existence of arbitraries, or, rather, to reconcile the use of the basing-point method side by side, where there were no ports.

45937 The Witness: Your Honor, I do not see how I can answer that without knowing something about the source of these so-called arbitraries. I can understand the port arbitraries; they are coming from Belgium, or some other place, but I would like to know what would produce internal arbitraries. From my standpoint, it does not make sense, except when you have an isolated mill.

45938 By Mr. Paulson:

Q. In other words, you would assume that, given a certain number of mills, a certain number of buyers, a certain type of commodity, and the other necessary related facts, that you would find one pattern in the industry, and one only?

A. As long as the conditions are the same, and if there are certain areas throughout the country, say, where those conditions change there might well be another pattern.

Q. Yes, but I said under the same conditions. Do not beg the question. I said under the same conditions.

A. Under the same conditions I would expect to see this pattern.

Q. You have characterized this pattern as being "a natural." Correct me if I am wrong.

A. Well, I did not use the word "natural." I don't like the word. "Spontaneous" is the word I use.

Q. Well, I do not go far wrong when I use the idiom or slang "a natural"; do I?

A. I just happen to have an objection to "natural." It sounds like a natural law. Economic law is not natural law. It is the reaction to certain conditions, you see.

Q. Well, in either event, whatever you want to call it, if you find variations in that pattern you reach what conclusions—that there are some non-competitive elements that work, some collusion existing, or what?

45939 A. Well, I would have to repeat that I would have to know more about the situation to judge whether collusion might produce this arbitary situation.

Q. That is not my question now. I am generalizing with you now. I am trying to find out—

A. I was not aware that you had shifted to another question.

Mr. Paulson: Read the question to him.

Trial Examiner Norwood: What would you have to find out from this situation in order to enable you to infer that there was collusion?

The Witness: Which situation, Your Honor?

Trial Examiner Norwood: The situation as described in the hypothetical question No. 1.

The Witness: You are now changing the question from the one I have been answering?

Trial Examiner Norwood: Yes; I am asking you a new question.

The Witness: What would I have to infer in the long hypothetical question?

Trial Examiner Norwood: What would you have to find? What conditions would you have to add to hypothetical question No. 1 in order to enable you to infer collusion?

The Witness: In the first place, it seems to me I should be forced to go through the question to see what assumptions violate the proposition that collusion would 45940 be the outcome. In the second place, there are a number of conditions here that definitely point to the opposite.

Trial Examiner Norwood: As a negative?

The Witness: Yes; that is right. Then, beyond that, this thing bothers me: It seems to me, if I were in the cement industry and got together with my competitors, I would not work out the basing-point system.

Trial Examiner Norwood: We will take a five-minute recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

By Mr. Paulson:

Q. You have just told us, Professor, that there are factors in the hypothetical question No. 1 that negative the inference of collusion. Will you take the question and point those factors out?

A. At the end of the first paragraph there is a statement that the manufacturers of cement are engaged in a struggle for tonnage. It seems to me that that might at least suggest that there was not collusion among them.

Q. Would that suggest that there was not any collusion, or complete collusion?

A. That, in itself, is not definitive as to the complete situation. That is, you might have agreement on
45941 some things and still have to compete for tonnage.

Q. In other words, you do not expect to find any more perfection in collusion than you do in competition?

A. When you raise that question I find myself in deep water, because collusion is not an economic term. Economists have not attempted to refine that term, like we have the concept of monopoly, or the concept of—

Q. Then, you cannot fully analyze competition unless you know all of the characteristics, all of the indices of collusion; can you?

A. That is a different question, you see. We have ideas about competition and monopoly. Now, collusion might produce and might not produce, as a matter of fact, a monopolistic result. Technically, and perhaps I should explain so that our minds may meet, what I have in mind by "collusion": I have in mind by "collusion" agreement among competitors to carry on illegal activities, and it seems to me, therefore, if these manufacturers are engaged in a struggle for tonnage, it is obvious that in that respect they have not agreed as to a division of the market.

Q. Well, if that is obvious, is it not true that they might agree to divide the tonnage and not make a perfect agreement?

A. That becomes a refinement. That is the difficulty; that is, you have a statement here, that they are engaged in a struggle for tonnage.

45942 Q. Well—

A. That suggests to me vigorous struggle for tonnage, you see. The word "struggle" is not an effeminate, weak word. It suggests aggressive rivalry, you see.

Q. You have to place shadings on the word "collusion," the same as you do on "competition"; do you not, in order to be scientific in this thing?

A. Well, to say, if I were a legal technician, I suppose that probably is true in the law; at least my legal friends have told me "collusion" can range all the way from here to here (illustrating).

Q. Yes. Is it not true that there might be imperfect collusion just as well as there might be imperfect competition?

A. I suspect that is right; but I don't feel competent in that area, because it is an area in which I have not given organized thought.

Q. And is it not also true that you might have a half way mark where you have competition left, but it is much lessened and restrained by virtue of certain collusive agreements?

A. I should think it is quite possible that collusion might deal with only certain activities.

Q. You have told us that you do not expect to find perfect competition.

A. That is right.

Q. An abstraction.

45943 A. An abstraction; yes.

Q. And you would not, by the same token, expect to find perfect monopoly—perfect collusive arrangements?

A. Well, now, you are using two words, you see. "Monopoly," to us, does not mean "collusion." They are not synonymous terms.

Q. When you speak of "monopoly," what do you have in mind?

A. The etymological meaning of the term "monopoly" means singleness of control over supply on the part of a given seller.

Q. Where a group comes together and controls, what do you call that?

A. You may achieve monopoly result through combination, if the combination is as effective as the individual firm as a monopolist.

Q. And where it is less perfect than an individual firm's control, what do you call that?

A. As far as I know, we have no word in economics to—

Q. Is not that imperfect competition, then?

A. Not as I have been using it.

Q. Well, it is or it is not.

A. It sounds to me that it might be imperfect competition or imperfect collusion.

Q. But are not imperfect collusion and imperfect competition one and the same thing?

45944 A. No.

Q. Explain that, please.

A. In my conception of imperfect competition, there is no assumption as to collusion. When we analyze imperfect competition we are trying realistically to see what kind of result one gets under different conditions without collusion, you see.

Q. And one of the things that might move a situation from perfect to imperfect competition—one of the factors that might move it, switch it from perfect to imperfect, is collusion; is not that correct?

A. I will put it this way: Agreement among competitors might make a market less perfect or competition less perfect. Conversely, it might make it more perfect. That is the difficulty in going from what I assume is a legal field into an economic field. That is, these words have different connotations.

Q. Then, as I understand it, it is possible that collusion exists in an industry, and you would still describe the industry as exemplifying the state of imperfect competition?

A. Yes; I think that is quite possible; yes.

Q. In other words, the term "imperfect competition"—

A. May I make that clear, though, that the concept of imperfect competition has no inference with respect to collusion, you see.

45945 Q. I understand that.

A. Yes; but the collusion might make for greater imperfection of competition, or vice versa.

Q. Now, go ahead with the analysis of the question, and tell us what other factors this long hypothetical question indicates to you which negative the inference of collusion.

A. In the first line of the second paragraph it says there are a very large number of buyers. That would indicate that there is no collusion on the buying side, although I suppose that is not an issue in this case.

Q. That is, you assume from the fact that there is a very large number of buyers there is no collusion between the buyers?

A. Unless there were some further indications that the buyers had an agreement among themselves.

Q. Well, are you justified in assuming either one or the other merely from the number?

A. Perhaps not.

Q. No. What number would you say would collude, and what number could not?

A. By the numbers, I merely assume, when you have a large number, as especially stated here, that there was implicitly the assumption that these buyers competed against each other.

Q. You assume that they were?

A. Yes.

Q. All right.

45946 A. At the end of the second paragraph, and that means the top of page 2, you have the statement:

"From time to time some manufacturers have, upon request, made sales to customers f.o.b. mill."

It seems to me that if there were agreement you would not normally expect the manufacturers to have that kind of freedom.

Q. I want to ask you how you reach that conclusion. Will you explain that, or shall I ask you a more definite question?

A. I think, if you have agreement, it must be an agreement upon something, and if you have an agreement upon something, as, for instance, say, the method of pricing, that within the bounds of the agreement you do not expect to see variations from that pattern set up.

Q. Which did you understand from this hypothetical question: One, that the sellers will sell f.o.b. mill whenever requested, or, two, that they, except in rare cases, refuse to sell f.o.b. mill even upon request?

A. Both are present, but this suggests, you see, that buyers, when they see that it serves their interest, do make sales on this other basis. I mean, the sellers do that.

Q. And what would be your answer; how would it affect your answer, if you assume that, even contrary to their own personal interests, they refused to sell f.o.b. mill when requested?

A. May I ask for an illustration of that?

45947 Q. For instance, suppose a mill is located at Thomaston, Me., and the Government starts a Passamaquoddy project, and they offer to purchase 300,000 barrels of cement, or more, from the mill located at Thomaston at the average f.o.b. mill price; that mill has been known to have sold at or about that time, and the mill rejects the offer of the Government. That is what I mean by refusing to serve their own self-interest.

Now, assuming that is normally the situation in this industry, how does that affect your answer?

Trial Examiner Norwood: I will allow the witness to answer the question, with the assumption that it is to the mill's own best interest to make the f.o.b. quotation.

45948 A. Well, that, again, creates a rather difficult situation, it seems to me, for myself as a witness.

That is, the assumption is that this is in the mill's best interest, but without knowing other factors I do not know, you see, whether it is in the mill's best interest. There may be other—

Trial Examiner Norwood: Kindly assume that as if it were true, and give us your answer.

The Witness: Now, the question is, how I would explain refusing to do something in its own best interest?

By Mr. Paulson:

Q. I am asking you how that would have affected your answer.

A. How what would have affected my answer?

Q. In the situation just described; namely, where one mill refused to serve its own best interests, refrained from serving its own personal best interests. I am asking you to assume that that is the normal situation in the industry. How would that affect your answer to the hypothetical question?

A. That the normal situation in the industry is for a mill to serve its own best interest?

Q. Yes.

Trial Examiner Norwood: By quoting f.o.b. mill.

The Witness: Your Honor, again, if a witness may object, this runs counter to the assumptions with which I have been dealing.

Trial Examiner Norwood: He is giving you a 45949 different assumption and asking you if your answer will be different.

The Witness: You see, it is extremely difficult for me to understand that situation.

By Mr. Paulson:

Q. Would you expect, then, if you found that that situation which I have described prevails, that there is some group interest that the individual is serving?

A. Not necessarily. That is—

Q. Why would he deny his own personal interests?

A. May I bring it down to earth, or at least, I think, bring it down to earth?

If this actually is to the mill's best interest, and it does not take the business, it seems to me to be an irrational act, and in my thinking, the way I approach this problem is that there are other factors that make it not to be in the mill's best interests. Now, it might be that, among those

other factors, agreement, if there were such; but I see no necessary inference of collusion or agreement.

Q. What other such factors might there be?

A. Those already stated, that accepting this business might arouse retaliation from competitors.

Q. Do you think that it is a normal competitive action to refrain, then, from exercising your own best interests?

A. You see, we are shifting position here a bit.

45950 It seems to me a firm is exercising itself in its own interest when it tries to maintain a condition where it does not arouse retaliation.

Q. Why is it to a mill's best interest, or, let us say, the seller's best interests, to refrain from inviting retaliation?

The Witness: May I have that wording?

(Question read.)

A. That seems to be rather obvious. That is, you know, if you start something, your competitors must meet it, and that possibly they will go you one better, especially, you see, if they become a bit peeved.

Q. Well, if you have a position in an industry whereby you are running on an efficient basis and having an advantage over your competitors from a production standpoint, would you say that it is against your best interest, even looking at it from the long-run point of view, to sell at cost-plus-profit basis, and get all the business you can?

A. Well, now, that brings in some new conditions, which simplify the problem.

If that mill, say, located up there, felt definitely that it had better equipment, better operating ability, say, that on a cost-and-price basis, it could not only meet competition, it could exclude competition, it might or might not be the rational conduct for it to try to exclude competition.

45951 It would have to make a calculation to discover on which basis it would make the most money; but here is the hazard: Suppose the calculation shows that it would make more money by having a low price and keep competition out, if it is still making money it invites competition. In other words, it invites business to come into the area and establish a plant.

Q. Is it acting competitively when it refrains from exercising its own self-interest?

A. Is it acting competitively when it refrains from exercising its own self-interest? The self-interest may be either short-run or long-run.

Q. So you say that, even looking at it from the long-run standpoint, and for that reason it refrains, it is still acting competitively?

A. I think the long-run factor is most likely to be most conclusive in determining this result. I think, without knowing the conditions at all, the Main mill would have a strong reason for assuming that it could not whip competition elsewhere, that it would be so much more efficient that it could afford to meet head on.

Q. Well, when it withdraws within its own shell, so to speak, it is not acting vigorously. Is it acting competitively?

A. Yes, under the conception of imperfect competition.

Q. And how far will you let it go in pulling its punches, so to speak, like that, or, with those tactics, how far will you let it go before you characterize it as laying it
45952 self on the altar of collusion?

A. It will go as far as its own independent self interest would suggest that it go.

Q. Well, do you not, in your study of competitive structure, consider the public side of the question?

A. I am not certain as to just what is happening here. Are you giving a new question now?

Q. Yes; this is obviously a different question.

A. Yes. I thought, the way it came along, that was supposed to be related to the previous question.

Q. It is along that line; we have not left that line, but I am trying to find out how you evaluate competition.

Mr. Paulson: Read the question now?

The Witness: May I have the question?

Trial Examiner Norwood: Read it.

(Question read as follows:

"Q. And how far will you let it go in pulling its punches, so to speak, like that, or, with those tactics, how far will you let it go before you characterize it as laying itself on the altar of collusion?")

The Witness: Then, I thought you had a new question about the public interest now?

Mr. Paulson: Yes; read on, so that the witness will get a clear picture of where we are.

45953 (Record read as follows:

"Q. Well, do you not, in your study of competitive structure, consider the public side of the question?")

The Witness: Now, may I ask what you mean by the "public side of the question"?

By Mr. Paulson:

Q. If all sellers in an industry pull their punches, the result is that the benefit of their efficiency is not passed on to the public; is not that true?

A. You almost reverse positions here now, because I did not ask you that question, you see. I asked you what you meant by the public aspect of your question, what you meant by looking at it from the standpoint of the public.

Q. Well, I am trying to make clear what I mean by the public viewpoint, and so I asked you another question to stimulate your thinking along my line there.

Mr. Paulson: Would you read the question, please?

(Question read.)

A. You see, you have there the assumptions that all competitors pull their punches. Now, "pulling their punches" is not an economic term.

Q. We have already decided what we meant by that.

A. I don't know. Have we?

Q. We mean by refraining from exercising the self-interest which I described to you, that the mill at 4554 Thomaston refrained from exercising its self-interest.

A. I have tried to get this clear. If a certain mill refrains to exercise its self-interest, and by that we mean "pulling its punches," whether that interferes with the public getting—what is the rest of it?

Q. The benefit of the efficiency of the industry.

A. The word "efficiency" gives me a little trouble also. That is, it can be expressed in a number of ways.

Trial Examiner Norwood: Well, does the public, under those circumstances, receive any benefit from competition?

The Witness: You are thinking now of the dam up in Maine?

By Mr. Paulson:

Q. Yes; as an illustration of an industry, the members of which pull their punches.

Trial Examiner Norwood: Any of them.

The Witness: You don't mind if I think about this?

Mr. Paulson: No, take your time.

The Witness: I want to outline this. We have Maine up here—

Trial Examiner Norwood: Leave Maine out of it.

The Witness: Well, it simplifies it a bit.

Trial Examiner Norwood: Any mill that refrains from being competitive.

The Witness: That is a different question, Your
45955 Honor, isn't it? Any mill that refrains from being competitive, is what you say?

Trial Examiner Norwood: Yes.

The Witness: That is a different question from this one, isn't it?

Mr. Paulson: I did not use the term "refrain from being competitive." You say they are still competitive whether they pull their punches or not. I do not want to quarrel with you yet about that; I want to know how the public interest is affected when punches are pulled by members of an industry.

The Witness: I do not wish to be in a position of trying to object, but we have so many things mixed up here.

By Mr. Paulson:

Q. I do not think they are, Professor; but you take your time.

A. We have the public interest. We have the problem of what we mean by "efficiency." We have the problem of the mill violating its own personal interest.

Mr. Paulson: That is what we mean by "pulling punches."

Trial Examiner Norwood: Don't you understand that he is merely asking you what the effect of competition is on the public? Don't you understand that?

45956 The Witness: If that is all he is asking, I am willing to answer that; yes.

Trial Examiner Norwood: Yes; answer that.

The Witness: If I may put it that way; is that all right?

By Mr. Paulson:

Q. I will be glad to have you answer that, but I will also press for an answer to my question.

Trial Examiner Norwood: Well, answer my question first.

The Witness: There is no single sweeping generalization which I would be prepared to make as the effect of competition upon the public.

Trial Examiner Norwood: On the buying public.

The Witness: On the buying public, because competition takes so many forms; it is affected by so many conditions,

that, from my standpoint, one must analyze the conditions in each case.

Now, the general over-call assumption of many economists is that the result of competition is to maximize the national income, but when that over-all statement is made inevitably the economist has in mind something that smacks of perfect competition. The competition as it works may have many wastes in it. It may actually produce certain effects that some people might argue tended to in-
45957 terfere with the maximization of the national dividend; so my feeling is that one must analyze the conditions in each industry in each case.

Mr. Paulson: Now, will you read my question just preceding His Honor's question?

Trial Examiner Norwood: I think it would be less confusing for you to restate it.

By Mr. Paulson:

Q. Well, I want to know whether or not you consider that the public in receiving any benefits from competition if the members of an industry continually pull their punches, using "pull their punches" in the manner which we have explained over and over here?

A. Yes. Now, pulling their punches in certain ways might make competition more perfect and less wasteful. One in other words, would have to know the circumstances that operate. I may say rather bluntly that one of the misfortunes of imperfect competition analysis, as well as one of its good fortunes, is that it forces this analysis of particular conditions. The misfortune is that it interferes with easy going generalizations in many cases. The good fortune is that it forces economists out of a closet into the market place to see what is going on.

Q. Well, but what regard do you give to the public interest in appraising competition?

The Witness: May I have that word?

45958 Trial Examiner Norwood: Read it.

(Question read.)

A. You are asking me that as an individual now?

By Mr. Paulson:

Q. Yes.

A. As an individual I feel it important to consider the public interest. The misfortune of that is that there are all sorts of criteria of the public interest, and that is so

difficult that many people prefer not to raise those questions. My feeling is that you might as well put your teeth in difficult things sometimes because you are a citizen as well as a scientist, you see. As a citizen I do think about the public interest. In abstract economic analyses that raises other issues, you see. You are analyzing the play of certain forces, then if you wish to raise a question, Does that serve the public interest? that produces another type of analysis.

Q. Well, you started off, I believe, before, on cross, and I know particularly on direct, by defining competition one time as being a rivalry between two sellers for gain, I think, or something like that. I want to know in looking for competition you look solely to see whether there is some rivalry between sellers, and if you find some rivalry between sellers have you found competition?

A. It is a little deeper than that. One looks for the nature and quality of that rivalry, you see.

45959 Q. And what determines the quality of the rivalry?

A. All sorts of factors.

Q. Isn't it the public interest?

A. Oh, no, public interest is—

Q. Isn't it whether or not—

Mr. Leisure: Now, wait.

The Witness: Pardon me. Why should the public interest affect the quality of rivalry? I see no connection.

Q. Well, how do you determine the quality of the rivalry?

A. Well, I have tried to indicate that there are two problems here. One, analysis of the nature of competition irrespective of ethical or moral or public interest. To answer the question merely to see how it works, the first interest of any scientist is to answer the question of how, you see, how and why. Then, as soon as you have that answer he may or may not choose to go beyond that and raise questions of application to the public, or other interest, you see. And I wish to make it clear that when I do that I leave the field of economic science narrowly defined and enter another field that of normative science or ethics, of something else, you see.

Q. I still don't know what indices, tests, you use to determine the quality of competition.

A. Oh, now, that is a different question. Do you wish me to discuss that?

45960 Q. Yes.

A. I am almost inclined here to give a lecture.

Trial Examiner Norwood: I wish you would just give a short, direct answer, or as short an answer as you can.

The Witness: I will try to do the best I can, Your Honor, but here is the unfortunate aspect of that question, that in my judgment, I am speaking now deliberately, the finest thing that is happening in economic science just now is the attempt to bring it down to earth along the lines that we have been doing here.

By Mr. Paulson:

Q. Try and stick to the question.

A. Wait, now. I am getting to your question.

At present there is a great deal of discussion of these things, and we are getting new light, almost every issue of any economic journal has new light, new refinements of analyses.

Now, I should like to feel optimistically that perhaps after a long period of controversy and discussion, meeting of minds, that we would be able to do a better job than we have in the past from the standpoint of your question of what is the nature and quality of competition, what determines these, the kind of competition that operates.

Now, at present in economic analyses we have no meas-

45961 ures for the most part of the sort of thing that you are asking me. We are proceeding from certain conditions assumed, or as we find them, to the result, and, therefore, you see it makes it difficult. I can indicate certain factors that play, certain variables that operate, but I cannot weight those factors and tell you that the result is decimal point one, or minus two one, or something of that sort. I can give you my judgment, and one will do that realizing even that one cannot give a clear-cut, a measurable answer.

Now, here is the sort of thing that I have in mind, the sort of thing that many of us are trying to do. We are taking our apparatus and looking at the economic scene just now, and trying to classify—

Trial Examiner Norwood: Now, just wait, Doctor.

Read the question.

(Question read.)

Trial Examiner Norwood: Now, can you answer that question?

The Witness: I was just up to that point. I was just to that point, Your Honor.

Trial Examiner Norwood: Yes.

The Witness: One of the indices is the nature of the product, if the product is standardized.

By Mr. Paulson:

Q. Now, are you sure you are answering the quality of competition?

45962 A. Yes.

Q. Not the existence of competition, the quality of competition.

A. To me this means quality of competition.

Q. All right.

A. One of the indices is the nature of your product. If the product is homogeneous, competition will work, will be more precise. Another factor is the numbers of buyers and sellers, or both; that is, I am thinking of both sides.

Q. Well—

Mr. Leisure: Let him finish, please.

Mr. Paulson: I do not think he is answering my question.

Trial Examiner Norwood: Yes; go ahead.

Mr. Paulson: I do not think we have a meeting of the minds on what I have asked him.

Trial Examiner Norwood: Let him answer.

A. The numbers of buyers and sellers. When there are large numbers of buyers and sellers and they are in close communication, focussed and competing, buying and selling for the same homogeneous product, competition tends to cut sharply or precisely—

By Mr. Paulson:

Q. Tends to what?

A. Tends to cut sharply or precisely. Another

45963 consideration one looks at—

Mr. MacIntyre: Now, just a moment. Your Honor please—

Mr. Brick: Let him finish.

Mr. MacIntyre: Just a moment.

If Your Honor please, what are Respondents' Counsel asking us to let him finish, a leeture? We want him to answer the question he was asked, and we ask that he be instructed to answer.

Trial Examiner Norwood: Will Counsel please be seated.

He is answering that.

Complete your answer.

A. Another consideration one looks at, if there is not a standardization of product, is the kind of differentiation of product there is, and the kind of competition, one finds many firms that have variations in the quality of their product, and, by the way, sometimes you get a very curious result there. There might be very keen—

By Mr. Paulson:

Q. Now, let us stop there for a minute.

Mr. Porter: He is not through.

Mr. Paulson: I am not going to cut him off.

Mr. Leisure: I submit—

Trial Examiner Norwood: I think that answers 45964 the question.

Mr. Paulson: He has got past the answer there.

Trial Examiner Norwood: Are there any further tests you wish to mention here tersely and concisely as to how you detect competition?

The Witness: Yes, there are others.

Trial Examiner Norwood: Well, give it to us.

By Mr. Paulson:

Q. That is not the question, you see. That is what he has been talking about but that is not what I am asking him.

I want to know what he considers are the tests of the quality of competition. I want to now ask him this question: How do you explain, as an economist, the universal opinion in favor of competition? What is it? Why is it desirable?

Mr. Leisure: Now, I object to the new question unless Counsel wants to withdraw the first one.

Mr. Paulson: I will give him a chance to finish.

Trial Examiner Norwood: Just consider that the previous question is withdrawn.

The Witness: We are through with that, then, Your Honor?

Trial Examiner Norwood: Yes.

Now, this last question—

Mr. Paulson: I will give him a chance to finish, but I

insist on being able to direct this witness' attention
45965 and not have to listen to a whole lecture.

Mr. Porter: That is not proper, Your Honor, to say, "I will give him a chance to finish," when he is half way through.

Trial Examiner Norwood: I think it is perfectly proper. Will the Counsel please be seated?

By Mr. Paulson:

Q. Will you answer my last question?

The Witness: May I have the question, please?

Mr. Paulson: Read it.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Leisure: If Your Honor please, I want to state an objection. I want to object to the second question on the ground it is the same as the first one, and the answer would be the same, and Counsel would not let him finish the first answer, so I have no reason to suppose he would let him finish an answer to this one.

Trial Examiner Norwood: The objection is overruled. Answer the question.

A. Now, as I got the question, there were two parts of it. I am sorry, I would like to have it re-read so I can get those two parts clear.

Trial Examiner Norwood: Read the question.

45966 (Question read as follows:

"Q. That is not the question, you see. That is what he has been talking about but that is not what I am asking him.

"I want to know what he considers are the tests of the quality of competition. I want to now ask him this question: How do you explain, as an economist, the universal opinion in favor of competition? What is it? Why is it desirable?")

A. Now, may I inquire, since this is your question, is the first part concerning tests of quality out? Or is that still in?

By Mr. Paulson:

Q. No, I am driving at that. I am still asking you that same question. I am attempting to approach it from another avenue. I did not think you were answering it directly, so tell me now the answer to the last part of this question that I have just asked you.

The Witness: May I have the wording of the last part?
Mr. Paulson: Yes. Will you read it, please?
Trial Examiner Norwood: Read it.
(Question read as follows:
"I want now to ask him this question: How do you explain as an economist, the universal opinion in favor
45967 of competition? What is it? Why is it desirable"?)

By Mr. Paulson:

Q. Now, why is it desirable?

A. Yes; in the first place I cannot answer that because I do not accept the assumption that there is a universal opinion that competition is always—

Q. Why is it desirable in the instances that it is desirable?

A. Now, you are changing your question?

Q. Yes.

A. Whether there is universal opinion or not?

Q. Yes.

A. That is out, then?

Q. Yes. Why is competition desirable where it is desirable?

A. All right. Competition is desirable, say, if it leaves a deposit of benefit to the members of the community in terms of products given, in terms of the prices of those products, in terms of the services, and so forth, received in connection with the products, and if, say, the absence of competition might give you goods, better quality at lower prices, say, with better services, one might very well argue, you see, if you are thinking merely in terms of efficiency concepts that it would be preferable to get along without competition, and many people would take that position.

Q. Now, then, since you place as one of the reasons here why competition is desirable, that you have
45968 just stated, namely, that purchasers and the general public receives benefits, why do you—let us say that—why do you value imperfect competition of the type where members of an industry pull their punches?

A. Have I indicated—

Q. And do not pass on their local advantages?

A. Have I indicated anywhere that I place a value judgment upon pulling punches in competition?

Q. Well, do you value, and do you value that type of competition where punches are pulled?

A. Yes, I think quite commonly in our society it would be desirable to have competitive punches pulled. I can illustrate if you wish.

Q. Well, I won't need the illustration right now.

You do value it, you think it is desirable to the public? Do I understand you thoroughly?

A. That is right. It is not quite common.

Q. Is it as valuable to the public as the type of competition where punches are not pulled beyond the point of cost plus a fair profit?

A. Now, you will probably think that I am trying to evade something. I am not. But we economists have lots of word-troubles. You used cost plus fair profit. I would be forced in order to have our minds meet to throw that back upon you, what do you mean by a cost and fair profit?

45969 Q. Well, I mean a sale at the lowest possible sale of the product at the lowest possible figure that will enable the man to enjoy—the seller to enjoy a fair return on his product.

A. What is a fair return upon his product?

Trial Examiner Norwood: Now, Doctor, you arrive at what you think is the meaning of those terms, and answer that question the best you can, and if we do not understand it we will ask you further questions.

The Witness: All right, Your Honor.

A. In economics we do not use a term "fair." It is not in economic science.

Trial Examiner Norwood: Well, do you understand what the term "fair" is?

The Witness: I do not except subject to the criteria that are employed in each case. In economics we speak of minimum profits; for instance, those may or may not be fair profits, and by minimum profits we mean those profits necessary to maintain business enterprise in a given situation. Those profits may be below a proper standard from other standpoints.

Trial Examiner Norwood: I did not ask you to give me those definitions. I asked you to answer that question with any meaning that you conceive of for those terms.

The Witness: There is a meaning, yes, buf it is not within the word "fair."

45970 Trial Examiner Norwood: Then, you cannot answer the question, then; is that right?

The Witness: Not with the word "fair" in it, no.

By Mr. Paulson:

Q. Are some types of competition more desirable than other types of competition?

A. I think one could always answer that "yes," if you know about the types involved.

Q. And is the type of competition wherein punches are pulled regularly as valuable as the type of competition where they are less regularly pulled?

A. One would have to know the conditions in each case, and quite commonly I think it is desirable to have the punches pulled.

Q. How? Why do you reach that conclusion? How do you reach that conclusion?

A. Now, you would like to have me illustrate?

Q. Yes.

A. For instance, not uncommonly, I am convinced in my thinking that retail stores in competition have gone too far in providing services, competitively speaking, and that if, either by agreement or some other way, in our wisdom we could find methods, say, find methods of eliminating some of those services so they would have lower operating costs that would be advantageous in the community,

45971 Q. In other words—well, let me ask you this: Would that withdrawal of those services, the holding back of those, in your mind spell lessening of competition?

A. Let's see if I have your question: Would the withholding of services spell the lessening of competition? Not necessarily, no. It merely changed the form of competition.

Q. It is not less. You said that you thought it should be restrained, as I understood you, you did not use the word, but I thought you said it could be too vigorous, and therefore not be in the public interest.

A. Just a minute, please. You see, I think our basic trouble here is you have a quality concept which again is foreign to economic analyses. Our concepts are one of the nature of the thing, and a reference to quality, when I use the word "quality" I think of the nature of it, you see.

Q. Yes, and so—

A. Just a minute, please, if I may.

When department stores over the period of years accumulate services and their costs keep rising, and so on, in competition, that takes one form or expression of competition.

Q. Well, don't you have any degrees to count? Do you have any degrees of competition? You do, don't you, you have told us you have; haven't you?

A. Not in a measurable way. We approach the thing in terms of the kind of forces that play.

45972 Q. Well, can you or can you not, in your thinking, conceive of a certain state of competition today and a different state of competition with no new forms added tomorrow?

A. By "no new forms," you mean no new types of enterprise, or what?

Q. No, I mean, can you conceive of competition being lessened? Is that in your vocabulary at all?

A. Yes, yes.

Q. Well, under what circumstances could it be lessened?

A. Well, I have discussed that, I think, to some extent, as I recall, on the direct.

Q. Is it lessened when the Thomaston mill refuses to exercise its natural advantages and sell cement at less than the commercial price?

A. Before I could answer that I would be forced—I would want to know what the mill did with that capacity, or with its competitive energies.

Q. Well, how would that help you determine whether competition had been lessened and what the mill did with it?

A. Well, I think it is rather important; that is, the size of the mill, and if, as you say, it did not take certain business maybe it got other business, you see.

Q. Assuming it put no higher pressure on to get other business, but made exactly the same efforts.

A. But there is still another problem, if it had
45973 taken this business could it have gotten the other business, would it have been absent from some other market?

Q. Assume that it would not.

A. Let's see if I have the problem. If the mill had

take it Government business on one basis it could still have gotten other business on other bases? It does not make sense to me, you see.

Q. Assume it could have, and it did not, was competition lessened?

A. Now, let's see if I have that: If the mill could have gotten Government business on one basis, and other business on the regular basis, would that have—and did not do it—would that have lessened competition. You will think I am trying to evade you. There is still a problem of carrying along to other enterprise.

Q. Of what?

A. Carrying along to the other enterprises. This starts things in Maine, works down to the New England States, and down into New York, and to give a thoroughgoing answer one would have to follow those ripples of waves, or whatever you call it, of the transmission of competition.

Q. Well, I am asking you, Professor, whether competition is lessened, not whether the best interests of the company is hurt, but whether competition is lessened.

A. And I am replying that it is difficult to give 45974 an answer until you know other facts.

Q. What other facts? I will be glad to supply them.

A. For instance, what is happening to other mills in the area farther down.

Q. Yes. That remains the same thing. The day that that man decides not to bid, there is no change anywhere else in the neighborhood.

A. Well, that seems to me there is no change in the intensity of competition, then.

Q. Was it an act of competition to refrain or an act of refraining from competition?

A. Perhaps I missed this question. Was it an act—

Trial Examiner Norwood: Read the question.

Q. Was his act—

Mr. Paulson: Read the question.

(Question read, as follows:

"Q. Was it an act of competition to refrain or an act of refraining from competition?")

A. That has a play in words there, was it an act of competition to refrain from bidding, you mean?

By Mr. Paulson:

Q. Yes.

A. I would not think so, not to refrain from bidding, if the bids in that case—

Q. Then it would be a non-competitive act?

45975 A. In that case, but here is the difficulty, it perhaps became a more vigorous competitor in the other direction.

Q. Since he substituted a non-competitive act for a competitive act, there was a lessening of competition, wasn't there?

A. No, that still does not follow because we still do not know whether the salesmen of the company were more vigorous in other areas, you see, competing for business.

Q. They were not. I assumed other conditions remained the same. I want to know about competition, is reducible to acts, isn't it, Professor?

A. It shows itself in acts.

Q. It is reducible to acts? It is acts, isn't it?

A. Well, that is a word matter. I do not think it would make very much difference; that is, it shows itself through acts, and if you wish to call the acts themselves the thing competition—

Q. Well, what is competition if it is not a collection of acts by those engaged in commerce in this country?

A. But, you see, only certain acts are competitive acts.

Q. That is what I want to know, too, only certain acts; I want you to tell me what is a competitive act and what is a non-competitive act so we can determine in this case whether there has been a lessening of competition or restraint upon competition, or whether there [illegible] free competition.

45976 A. My reply is that if you take yo[illegible] assumptions, if I have them, that refusing—th[illegible] a mill took that business it would not at all affect [illegible] gressiveness nor its policies in any respect in any of [illegible] direction, and, likewise, would have no effect upon the [illegible] udes and policies of competitors, keep everything else [illegible] atic, which I think you have got to do, otherwise to give you a precise answer is impossible, if one can keep everything else given, then that—see, other things occur to me now, that is the trouble. I think it is probably reasonable to say that unless other situation get into the situation, this involves the attitude of other firms, of activities of other firms, that did tend at that moment under those conditions tend to lessen competitive pressure.

45977 Washington, D. C.
Thursday, October 10, 1940.

45978 EWALD T. GRETHER thereupon resumed the stand and testified further as follows:

*Cross-Examination (Continued) by Mr. Paulson.*

Q. Professor, at the close of the hearing on yesterday, you were in the process of pointing out the factors set out in the long hypothetical question which, in your opinion, negatived the inference of collusion.

A. May I inquire where I was on this in the record?

Q. As I recall it, the last thing you were talking about was the word "struggle."

45979 Q. Go on from there, please.

A. Is that the top of the second page here?—

Q. Yes.

A. —that you are speaking of?

Q. Yes.

A. At the beginning of the next paragraph, you have the statement:

"In quoting prices a manufacturer usually takes into consideration the prices which have been quoted by his competitors for delivery at the destinations in question."

That, to me, suggests that the competitors are quoting prices independently.

Q. Now, assume that instead of that sentence you had the statement that the sellers were cooperatively quoting prices, what would be your answer?

A. Well, in that case, of course, you would still take into consideration the prices in the sense that you would meet the prices.

Q. My assumption is that there is a cooperative arrangement for quoting prices, so that the term "meeting prices" is not a happy selection there, but the fact

45980 is that they together quote prices; therefore, each knows what the other is going to quote, and each quotes what the other quotes. What effect would that have on your answer to the long hypothetical question?

A. We are referring now to this sentence only?

Q. Yes.

A. Well, these words suggested to me that you would take into consideration the prices you find and not the prices that a group had set up, you see. You find out what the prices are, and then you base your price upon that.

Q. So that there is a difference between that hypothesis and this one, is there not?

A. Yes. You are assuming that they had an agreement beforehand on the prices?

Q. Well, I did not assume that they were agreed on the prices; I did not go quite that strong. I want you to assume that they cooperatively quoted prices.

A. Well, when you say "cooperatively quoted prices," and yet are not willing to go far enough to indicate agreement, it might be that we are talking about the same thing; that is, each firm has its eyes on every other firm, you see. You call it "cooperative." I don't care what you call it. I don't.

Q. Let us assume that they make the majority of their quotations—I should say make the quotations at the majority of destinations, following a pattern in this
45981 manner: They find out by sampling the field what base price governs, and then extend that rule as a general rule and make price quotations at all of the rest of the destinations in that area, according to the rule.

Is that, in your opinion, cooperative pricing?

A. I wonder if we are using the word "sampling" differently. You are using it, perhaps, differently than I would. When I speak of "sampling," you go out and get a small sample of some sort that you think is adequate for your purposes. I do not think a sampling concept is adequate here, as you have to meet competition where you find it, and a sample does not necessarily—

Q. Answer, if you will, my hypothesis, whether or not what I have described is cooperative pricing.

A. You mean taking a sample of what you find, and then basing your pricing upon a sample?

Q. Well—

A. I do not see why that should be cooperative. If you think you are close enough to what competition does by sample—in other words, to use the language of the statistician, he figures the samples representative, which I do not think fits the situation. If you feel it does, you could go ahead on that basis until you found out that it was not.

Q. Well, you have not quite grasped the hypothesis

that I am putting to you. Assume again that they
45982 do in establishing their quotations, or that each seller in establishing his quotations does contact one or two dealers in a given territory, and finds out what quotations have been made to them by the various sellers in the field, calculates back from those quotations what base price is applicable, and then, having satisfied themselves that such base price is applicable, publish their quotations by assuming that that base is applicable, and adding freight to the base price to all of the destinations. Is that cooperative pricing?

A. Perhaps, again, I misunderstand. It is one firm now that goes out and get quotations, or, rather, finds out from two dealers the quotations they have received—well, we will say one or two dealers—and from that they figure out a pattern and they quote on that pattern, and your question is whether that indicates cooperation?

Q. Yes; each of the sellers operating in that territory does the same thing, and then I want to know, with those assumptions, do you have cooperative pricing?

A. I don't see why. That is the—

Q. Well, what kind of pricing do you have?

A. You have an attempt in this case to save a lot of trouble by trying to judge the market from a very small sample, which I should think would be very hazardous.

Q. We will come back to this subject.

Go on with your analysis, please.

45983 Pardon me, Professor. We got away from my original question, which was: Assume that they did cooperatively price, would your answer to the long hypothetical question be affected?

A. Well, I thought I discussed that. That is, it depends upon what you mean by "cooperatively," as I recall.

Q. Well, by "cooperatively," I mean that they concertedly, either by a plan or by agreement, publish the same quotation.

A. You see, I asked you whether by "cooperatively" you mean by agreement, and you said "No."

Q. Well, I am afraid you and I could never agree on my definition of "cooperatively," so I am assuming now that they do it by agreement, or by cooperative action.

A. Well, I cannot answer that in that way. If you say by agreement, that is one thing. If you say by "cooperative action," without definition, that is another thing.

Q. Well, assume that they do it by agreement, then. Let us assume that they issue price quotations by agreement. What would be the effect on you answer to the long hypothetical question?

A. As far as that one condition is concerned, I think that would change the conditions that we have here.

Q. Do you feel that an important avenue of competition is to be found in the naming of prices; that is, in the making of price quotations? That is what I mean
45984 by "the naming of prices."

The Witness: May I have that wording?

(Question read.)

A. An avenue of competition has to be found—

Q. Is to be found

A. Is to be found in the naming? Our minds do not meet. I do not know what you mean by "avenue of competition is to be found in the naming of prices."

Q. Well, what don't you understand about that?

A. They are different words than I use, you see, and I have no objection to answering the question if I know what you mean.

Trial Examiner Norwood: Well, whether an important function of competition is the naming of prices.

The Witness: That is an important aspect or manifestation of competition—the naming of prices is important in business getting.

By Mr. Paulson:

Q. And if independent action is entirely absent in that avenue, then competition is lessened or restrained?

A. Let us see if I have that. If there is no independent action in the naming or quoting of prices—is the word "quoting" synonymous there?

Q. Yes.

A. Then competition has been lessened?

45985 Yes, I agree to that.

Q. Now, you recognize that—do you recognize that if sellers in an industry sat around a table and agreed on a price which they would all quote that there would be no independent action in quoting of prices if they followed the agreement; do you recognize that?

A. If their behavior was because of that agreement; in the meantime, of course, there might be other reasons for it, in that fashion.

Q. What is the answer to that?

A. The answer is that if their behavior is because, that you have a definite cause for the situation there,—we make an agreement and we therefore follow the agreement.

Q. Then competition would be lessened?

A. That is right; yes.

Q. Now, what—

A. That is, I should add that we should have to know something about the nature of the agreement. As I indicated yesterday, one might agree to do things that increased competition.

Q. Well, I am assuming that they are eliminating all independent action in the quoting of, or naming prices, or of entering into agreements as to the price they shall quote; that lessens competition?

A. Yes.

45986 Q. Now, do you know of any methods which are good substitutes for outright agreements in the naming of prices?

A. Yes.

Q. What do you have in mind?

A. Under the so-called fair trade laws and the Miller-Tydings amendment, the manufacturers may fix the prices to dealers and may get the assistance of courts in enforcing those price schedules. In that case the manufacturer is able to fix, if he wishes, a price structure and interfere with the ordinary forces of competition in that respect between dealers.

Q. And is price filing to be classed in the same category,—of course, in a lesser degree,—but in the same category with price-naming agreements?

A. Well, not necessarily, unless price filing is implemented by something.

Q. What might it be implemented by to place it in that category?

A. If, for instance, there was some agreement that one must hold the prices, filed, for a certain period, or at least give a certain period, a certain number of days' notice before one's price was changed, something of that sort, you see.

Q. Does pattern pricing have some relation to price-naming agreements?

A. That is a phrase with which I am not familiar.

45987 pattern pricing.

Q. Well, the only time that you would have unrestrained or free competition looking at that one avenue of competition would be when you had entirely independent action in the pricing by each of the sellers; that is true, isn't it?

A. Provided we mean the same thing by "entirely independent."

Q. Yes.

A. I assume we do.

Q. Yes; and if all of the sellers found a common method of quoting prices,—for instance, if they found a method of using a number of base points, and supplied themselves with, and followed the rule and adopted or followed the rule of quoting the lowest combination of base plus freight, and then supplied themselves with a freight rate computation so that they would each have the same freight rate, then would you have something which lessened competition in that avenue?

A. There are still other variables, of course.

For instance, the fact that the mills under our assumptions here independently determine their own base, or whether they wish to operate as a base or non-base mill, for instance.

Q. Well, we have that. I am assuming—yes, I am assuming that they are not bound by any agreement but follow this—I am assuming simply that to follow this method—I am assuming that they simply have im-
45988 plemented themselves in and found this common method and are using it, and I am wondering whether, in your opinion, competition is lessened?

A. To go back to what I think is in the record, I think there is a certain amount of restraint in competition inevitable under all conditions of this industry.

Q. Did you ever study many of the price-filing provisions of the N.R.A. Code?

A. In a very general sort of a way. I have had some of my students make reports in my seminar.

Q. I notice on direct you said you thought open announcement of prices tended to lessen independent action in naming of prices. Now, I am—

Mr. Porter: Your Honor, I do not think the witness said anything of the kind.

I object to it.

Mr. Paulson: Well, I have it in my notes here. I am a little ahead of my notes on that particular point.

By Mr. Paulson:

Q. But you said it is to be expected that where each seller knows the other seller's price that he is not going to be as independent in his action.

A. No, I did not say that, I am certain.

Q. Do you recall what your position on that was?

A. I would have to check the record.

45989 Q. Well, generally, what is your position on this question of open announcement of prices? Does open announcement of prices tend to bring prices—make prices uniform?

A. I think it generally would tend in that direction, yes.

Q. Does that imply a lessening of independent action?

A. Not necessarily.

Q. Does the public receive the benefits,—all of the benefits of price competition that it—open announcements—under an open announcement plan that it would receive where each seller was left in ignorance as to his competitor's price?

A. That is a rather broad question, all the benefits of price competition. See that involves quite a few factors, but speaking in rather broad terms, which would be subject, I think, to considerable qualification, I think that where you have openly announced prices, you tend to probably introduce more restraint,—if you have at the same time relatively small numbers.

Q. And the more detail—and do you go as far as to say that the more systematic that announcement is the greater the degree of restraint?

Mr. Leisure: If Your Honor pleases, before we go any further with this line of questioning, in the interest of having a clear record I have the impression that part of the time Counsel is talking about restraint of competition and the witness is talking about individual restraint,

45990 and in the interest of not having an ambiguous record I would like to have it clarified on their questions and answers.

Mr. Paulson: Well, thank you, Mr. Leisure. I will be glad to check the witness on that point.

What is the question now? Maybe we can check it.

Trial Examiner Norwood: Read the question.

(Question read.)

A. I am speaking in terms of individual restraint; that is, the behavior of the individual competitor, and if,

say, you have full facts as to the price situation I think there is strong likelihood that a competitor can be more rational in conducting himself in relation thereto, and that will most likely, in the majority of cases, mean he is somewhat more restrained in pricing.

By Mr. Paulson:

Q. Well, on the subject of restraint, as far as the public is concerned, as far as economists are concerned there is no difference in, where you say restraint; is there?

A. I do not understand your question.

Q. Well, if everybody exercises self-restraint so that the result is that there is no discrepancy in quoted prices, no variation in quoted prices, the public is in the same position as it would be should there have been an agreement on price quoting?

45991 A. I did not state that there were no variations in quoted prices, and I made no observation, you notice, about the price change. I merely have in mind that I would expect that there would be a tendency towards a greater amount of rational restraint if you have full knowledge, say, of the price structure.

Q. What type of price-announcing method do you place in the category of collusion?

A. Is that a matter of type? That is, if you have agreement I assume you might use various methods of quotations, of types of quotations.

Q. Well, let me say this, you are familiar with the fact that in some industries the members, individually, publish prices so that they become available to sellers and to buyers; are you familiar with that fact?

A. Well, there are published price lists which I suppose competitors get access to as well as the buyers.

Q. Then, you are familiar with the fact that it occurs that industry, members of an industry, will file prices with a central agency with the provision that they shall be adhered to until change has been made at the central exchange; are you not?

A. Well, there have been those provisions, yes, during N.R.A. Code, as I recall it.

Q. Now, does the latter, in your opinion, con-
45992 stitute collusion?

A. No, I do not see anything collusive in individual price filing.

Q. What do you look for to find collusion?

A. Why, I think collusion is a matter of fact. You look for the agreement and the evidence of the agreement.

Q. Are you familiar with the fact that courts have said over and over again that agreement is inferable from circumstances?

A. I do not claim expertness in the law.

Q. Well, but don't you—are you familiar with that doctrine of the law?

A. I am not familiar with that, no.

Q. I am trying to find out what you really have in mind when you speak of collusion.

A. Yes.

Q. You have in mind, I take it, an agreement signed—a signed agreement?

A. It need not be signed. It might be orally entered into.

Q. But the proposition you have in mind, the situation where the proposition has been put to all, and all have acquiesced?

A. And have agreed to conduct themselves.

Q. But you have in mind that the proposition has been openly put and has been openly accepted by a nod of the head, or by a sign, or by signature or otherwise; is that true?

A. In some way has been accepted; I do not
45993 know whether it be a nod of the head or signed agreement, but there has been some method of getting a meeting of minds in a joint acceptance, and then follow through.

Q. In other words, you do not regard as belonging in the category of collusion the sets of circumstances where they are tantamount to agreement by virtue of the effects and markings as being the same as under agreement?

A. Now, we are back to that same problem we had yesterday, tantamount to an agreement, and I tried to make myself clear there. Individual behavior might produce a result that circumstantially might appear to be tantamount to an agreement, perhaps to some people, because it looks as if they had agreed.

It seems quite reasonable to me to assume that under certain conditions you get, say, a pattern of behavior that individually, you see, a pattern of behavior becomes crystallized.

Q. If members of an industry are filing prices with a central exchange, there is concerted action, isn't there?

A. No, they merely file with the central exchange.

Q. Well, there is collusion there, each sending the price to the exchange, the exchange is sending it back, and it is a joint proposition. That makes collusion, doesn't it?

A. I do not accept that, no.

Q. Well, I wanted to get clear what you under-
45994 understand by "collusion." That is cooperative action, isn't it?

A. It is cooperative action in collecting the prices, if you wish to call it that, but it need not at all affect behavior of the individual.

Q. But it is cooperative action? It is combination.

A. Well, that is another word again. Combination, to my mind, is a stronger word than "cooperative action."

Q. I want to try to get clear what you do think. I do not know what an economist thinks.

You do not think, or do you think, that when men do get together and set up an exchange for filing prices that they are in combination?

A. No.

Q. Not even in combination to file prices?

A. You use a word that I would not use.

Q. Well, they are filing prices in combination, aren't they, or are they not?

A. No, they are filing prices cooperatively.

Q. Supposing that they got together and supplied themselves with freight rate books to be used in quoting prices, is the joint compilation and dissemination of freight rates an instance of combination?

A. Now, the question is that they have done this jointly?

Q. Yes.

A. And does "jointly" mean that every member
45995 of the industry agreed to and contributes to the expense?

Q. Yes.

A. That seems like joint activity to me, yes.

Q. To that extent they are in collusion?

A. No, no.

Q. Well, now, you can have collusion for a good purpose or for bad purposes in your vocabulary, can't you?

A. Yesterday I indicated that collusion to me, meant agreement between competitors to do illegal acts.

Q. Oh, and if you don't have—

A. Yes.

Q. If they work together to build a monument then they are not in collusion?

A. No.

Q. Well—

Trial Examiner Norwood: Are they in cooperation in that?

The Witness: Yes, if they contribute to a memorial fund of some sort, they cooperate, it seems to me, in that particular instance.

By Mr. Paulson:

Q. Suppose that the ultimate purpose—assume, now, that the purpose of compiling and disseminating,
45996 cooperating together to compile and disseminate these freight rate books is to enable them to make identical prices, then is that collusion?

A. No; that is, I know from my experience in other cases, have observed, that if an industry does not do it they will do it for themselves when it is necessary to have information so they can meet competition.

Q. Your understanding of the law, then, it is perfectly legal to implement yourself with devices for the purpose of making identical prices?

45997 A. I cannot claim any expertness when it comes to law. I put that in print, by the way.

Q. Yes; but what I want to know is what you do understand. You see, you answered on direct that you could not infer collusion from a certain set of facts, and I have to find out, in order to understand that answer, what collusion means. That is what I am asking you now.

Trial Examiner Norwood: Is that correct?

The Witness: I must confess ignorance; that is, as to what the legal situation is, but—

45998 Q. Have you finished?

A. That is, from an economic standpoint, implementing one's self does not, to my mind, connote collusion.

I could illustrate that, if you wish.

Q. Well, is it a short illustration?

A. Yes. I have in mind a situation in the retail drug trade in California, before you had the current price laws, under which the independent retailers would always keep calling on the drug chain stores to get the prices, which was a terrible nuisance; so that a member of the trade, once a month, would get the chains' prices and publish them to their members, so it would save all of that trouble.

It seems to me that was to some extent meeting competition, and it merely overcame the nuisance in the previous situation.

Q. That was not done for the purpose of making identical prices?

A. Oh, yes, depending upon each situation, they had to be, to some extent, competitive with the chain store prices, you see.

Q. I want you to assume that they do this implementing for the purpose of making identical destination prices. That is the purpose of it.

A. Well, a—

Q. Now, I want you to have that in mind, and then tell me whether they have any collusion.

45999 A. No; because it is important in this industry, under the assumptions, that you have identical prices at a given point in order to be competitive.

For instance, it is common, say, for department stores to shop each other, and spend a lot of money to get each other's prices, so as to be competitive, you see.

Q. And if they make different delivered prices then they are not competitive?

A. You mean the stores are not—

Q. No, generally, if the department stores make different delivered prices, then they are not competitive?

A. No. In that case one gets the business and the other does not, and in that case the other store has to get in line to get the business.

Q. Let me get that straight: Is it your position that they may not quote identical delivered prices, or else they are not competitive?

A. That is right, or else they cannot get the business.

Q. And as an economist you say that anyone who knowing the other man's price, goes below it, is doing a uncompetitive act?

A. Oh, no, not at all. That is competition also, but my point is that it cannot go on forever.

Q. A little while ago, I understood you to state that, if two agree on prices and thereby eliminate independent action in the naming of prices, it would bring about
46000 a restraint upon competition?

A. Right. It might be; yes.

Q. I beg your pardon?

A. It might be. I agree to that; yes.

Q. Now, you are saying, as I understand it, that if you implement yourself for the purpose of making identical prices, you are acting competitively?

A. That is right. It is entirely reasonable and logical to me. You cannot get the business unless you are at the same level as your competitors.

Q. Now, would you say that if they made an outright agreement on prices and fixed the time when they should sell at those prices, for a year, that they were not suppressing competition?

A. No, no.

Q. You would say that they were suppressing competition?

A. They were to some extent suppressing competition, yes, if they outright agreed, and had acted upon that agreement.

Q. If they bring about the identical results by cooperative action, you would not put that cooperative action in the category of collusion?

A. You see, I don't accept—

Q. Answer that question, please.

A. No; I cannot answer that question, because you have two things: You have to get the information; you
46001 have activities that follow the use of the information. You may cooperate in getting the information, but you need not cooperate in pricing based upon the information.

Q. Let us assume, then, that cooperation is the *sine qua non* of the result; in other words, that you would not get identical price quotations if you did not have the cooperative action, then is the cooperative action collusion?

A. Well, when you set a thing up, that is, defining the thing in terms of itself—if you don't do it that way, you have a hiatus in your logic, you have a gap there. You assume that you cannot get it without cooperation. Then it is determined by cooperation.

Q. That is correct.

Assuming you can do it without cooperation, what is your answer to that question?

A. If you assume it cannot be there without cooperation, obviously it is there by cooperation.

Trial Examiner Norwood: Is your answer "yes" or "no"?

The Witness: Yes; it is there by cooperation.

By Mr. Paulson:

Q. Do you have collusion, then?

A. I am afraid I need your assistance as to the nature of this cooperation.

Q. The cooperation is the proximate cause of the 46002 identical prices.

A. Oh, pardon me. You did not say "proximate cause." You said "the cause."

Q. The cause put it that way—of identical price quotations at destinations. Then, do you have collusion?

A. Well, if you use the words in the same way, if that kind of cooperation should be the only cause, it would look to me like an agreement, you see.

Q. Go on with your analysis now, will you, please?

A. Beginning at the bottom of page 3, and continuing on page 3:

"Each manufacturer can at any time make its mill or plant a basing-point mill."

That connotes to me that there is independent action, and not collusion.

Q. In other words, you assume that wherever a seller is not bound by an understanding with his fellow competitors to follow a particular course of action, there is no collusion?

A. I think collusion is something relatively formal, yes.

Q. And something which—

A. And—pardon me—something that cannot be explained by rational independent action.

Q. Well, you are not attempting to; you do not, in your thinking, try to explain everything in terms of competition, do you—or do you?

46003 A. You mean in general?

Q. Yes.

A. Oh, no. When we do not find competition we have to look some place else for an explanation.

Q. Fifty percent of your thinking in your analysis of

methods being used by industry is to see whether or not there is collusion there; is it not?

A. Oh, yes.

Q. Well, you look—

A. You said 50 percent of my thinking.

Q. Well, I mean you look with one eye to see whether there is collusion, and with the other you look to see whether there is competition, do you not, in analyzing methods used by industry?

A. I suspect this is a difference in interest. Economists do not start from the standpoint of going out looking for collusion. They start from the standpoint of going out to see what is going on, to see the nature of the competition.

Q. Yes; the nature of it.

A. Yes.

Q. So you do not look to see where it has departed from a free form; do you?

A. If we find some things that do not appear reasonable or rational, assuming free competition, I think we would be interested to push further.

46004 Q. Assume that you found that the group as described to you in the long hypothetical question had an agreement to eliminate trucking. Would you say that they had thereby eliminated or lessened competition?

A. If they had agreement in the same sense as I use the term "agreement"; if their minds had met; they had discussed the problem, and they then went out, based upon an oral or written agreement, and went out and did this thing, yes, I think that they would in that respect lessen competition.

Q. But in your analysis,—

Trial Examiner Norwood: Suppose they went out with some sense of obligation of conforming, that their minds had met.

The Witness: You mean now, perhaps, Your Honor, an ethical conception, a code, the ethics of the industry?

Trial Examiner Norwood: Yes.

The Witness: I have seen codes of ethics on the walls of firms that did not follow them.

Trial Examiner Norwood: No; I am assuming that they went out with this sense of obligation. Would that amount to collusion?

The Witness: Not necessarily.

Trial Examiner Norwood: After they had carried it out, pursuant to this plan.

The Witness: I do not know whether this is a
46005 good illustration, but I noticed, down below in the room that we left, that they apparently have trade practice conferences—

Trial Examiner Norwood: I am not asking you about that. I am asking you about your idea of collusion as you have used it in answering these other questions.

The Witness: No; I merely feel—

Trial Examiner Norwood: My assumptions there were fairly clear cut; don't you think?

The Witness: No; I don't think that is collusion, when a group feels that they have an obligation because of ethical or moral factors—trade ethics factors.

Trial Examiner Norwood: Well, because of anything at all; leave out that condition and tell us then what is your answer.

The Witness: No; that is not collusion.

By Mr. Paulson:

Q. In analyzing sets of conditions to appraise competition, have you found recurring forms of lessening competition?

A. Is that an historical question?

Q. Well, if you do not understand the question I wish you would say why.

A. Have I found recurring forms of lessening competition?

Mr. Leisure: Just a moment.

Q. By "lessening competition" I mean depar-
46006 tures from free competition, you understand.

A. When you say have I found recurring forms, that, to me, refers to an historical situation—does this thing happen in a cycle, for instance? Is that right?

By Mr. Paulson:

Q. Oh, no. I mean more or less prevalent form.

A. Well, that is a different situation.

Q. Yes; that is different.

A. No; I can answer that merely in terms of research. This becomes factual. I have made enough investigation in this and other countries to find that certain things appear when the conditions are there, and that some of those things may lessen competition. I am referring now to my investigation of resale price controls.

46007 Q. And is cooperative action to maintain resale prices one of the things that you have in mind now?

A. No; I mean this kind of a situation, that when you get a certain industrial situation, especially when trademarks become important and well known to consumers, that increases the intensity of competition among dealers, and they try to get some assistance, you see, and they put pressure upon manufacturers to control prices.

Q. Have you ever found in your studies any form of cooperative action, which, in your opinion, lessened competition?

A. Yes.

Q. What kind of cooperative action have you found?

A. For instance, in Great Britain, it is quite common in industry and trades for the manufacturers, wholesalers, and retailers, to get together among themselves and agree —it is agreement now—that they will not deal with anyone who cuts the price below a published price in their so-called protective price list.

Q. Yes; but have you ever found cooperative action—

A. That is cooperative action.

Q. Of course, agreement is cooperative action, but I am asking you if you have ever found anything that you place in the category of cooperative action, that is not in the category of agreement, which lessened competition; for instance, price filing?

46008 A. Yes; I can bring it down to earth.

In California we have a so-called market pro rate law. The purpose of that law is to allow farmers, if a certain percentage of them agree among themselves, to get together and restrict the flow of California farm products to the market. If a certain percentage agree, they can force the rest of the people into that restricted program, the purpose of it being to make for better prices, as well as for a more orderly flow of California products to the market.

Q. Have you ever run across in your studies any instance of an industry that files prices for waiting periods?

A. I cannot give you the facts, but I am aware that under the N. R. A. there were those.

Q. Would you not say that that is a cooperative means of lessening competition?

A. Not necessarily. It is a cooperative means of implementing competition. It might have various outcomes.

Q. In your studies, have you ever found an instance of an industry, the members of which have cooperated to lessen competition?

A. Yes. I indicated Great Britain.

Q. But in this country have you ever found an instance of industry that was cooperating to lessen competition?

A. The California farmers here.

Q. Any manufacturing industry?

46010 A. In American industry, it is very difficult for an individual like myself, see, to get facts to judge that situation. Now, I could get those facts in Great Britain, because agreement is lawful in Great Britain. I can get those facts concerning California farmers, because you have a special statute which makes that kind of activity lawful.

Now, I could never be sure, unless I had full facts, which are almost impossible to get, as to conditions in American manufacturing industry, because we do have anti-trust laws.

Q. So that you have no instance in your mind, from your studies, where members of American industry have cooperated, with the result that there has been a lessening of competition; have you?

Mr. Leisure: I make the same objection.

Trial Examiner Norwood: Objection overruled.

46011 A. At the moment I cannot think of anything. I am not prepared to state that in my experience it has not happened.

Q. In your classes, do you teach that the use of the basing-point method lessens competition, or facilitates competition?

A. I teach that the use of the basing-point method is a spontaneous expression of conditions in the industry.

Q. Well, you are looking at it from terms of agreement. Does it or does it not—I do not care for the purposes of this question whether you consider it to be agreement or not—I want to know does it depart from free competition in the direction of lessening competition, or does it enhance the competition? That is what I mean.

A. You are asking me now over a period of several years, what I have taught my classes, and you are asking me to recall—

Q. The position you take in teaching your classes.

A. Yes. I do not recall definitely. I suspect my position might have changed somewhat as my thinking became more refined.

Q. Was there a time when you considered that the use

of the basing-point method departed from free competition in the direction of the lessening of competition?

A. I cannot recall that I have ever made a statement of that specific sort to my classes.

46012 Q. Have you taught in your classes, Professor, that the basing-point method of pricing does result in the lessening of competition?

A. I do not think that I, in my classes, remember it; it is difficult to speak factually. It has been a good many months now since I have lectured on this problem. I do not think I would approach the problem quite that way. I would try to interpret this phenomenon arising in industry, and I normally try to allow the students to draw their own conclusions, and if I do give them a conclusion I usually state, "This is a personal observation that might be wrong, draw your own conclusions," and—

Q. Did you ever at any time draw the conclusion in your own thinking that the basing-point method lessened competition?

A. Not the method per se, but under the industry you have a condition where you are going to have individual restraint, as already indicated, and I doubt whether the basing-point method necessarily allows more restraint than other possible—

Q. That is your present position?

A. Yes, yes.

46013 Q. I wonder when you first acquainted yourself with the subject, whether you had any other opinion?

A. Well, I should be interested, myself, to find out to see whether or not over a period of four or five years the comments I made in class have changed. I cannot say that.

Q. Is it your position that sellers should not exercise restraint in quoting prices?

A. That sellers should not exercise restraint?

Q. Yes.

A. I see no reason for having a position on that. My problem, as an economist, is to analyze the phenomenon.

Q. Let me put it this way: Do you consider that an irresponsible member of an industry, irresponsible because he prices without regard to costs, could be termed a harmful factor?

A. That would depend upon the circumstances, that is I think, without doubt quite frequently, those so-called ir-

responsible members of industries are harmful. Take a competitive situation where prices fall too low; I can well imagine other stipulations where they have a healthy influence.

Q. And you would, in your thinking—do you consider that cooperative action to educate that seller is in the interests of competition?

A. That again depends upon the circumstances. It might be that competition may be more perfect in an economic sense if an irresponsible member, say, became
46014 more responsible, and vice versa.

Q. Well, would you consider that cooperative action by the other members to induce him to be more responsible is in the public interest?

A. It depends upon the circumstances, for instance—

Q. For instance, would you consider that cooperative action to institute a cost accounting system in that industry is in the interest of competition?

A. Yes, definitely so, because—

Q. And would you consider that cooperative activities to institute a method of quoting, common method of quoting prices, is in the interest of competition?

A. That, again, would depend upon the circumstances.

Q. Well, the circumstances are that it would cause this irresponsible member and the other irresponsible members that might be in the industry to quote in a responsible fashion?

A. As I indicated, I would not know what the effect of the irresponsible member was from my standpoint until I knew the circumstances.

Q. How would you consider cooperative action? Would you consider that cooperative action which brought about the result of causing the irresponsible seller to be responsible is in the interest of competition?

A. It might be; it might not be.

Q. Well, under what circumstances might it be?

46015 A. Now, you are using very broad words there and that complicates it; that is, in the interest of competition, and I have got to answer it in the terms of quality of competition to use your words. I prefer the words of nature of competition, or degree of perfection of competition. An irresponsible member of a trade or industry might create a situation, say, in an industry where prices are pushed below minimum costs and mini-

mum profits in order to maintain, say, proper facilities in that industry, and it would be in the interest, say, of competition, it seems to me, to have that member conduct himself more rationally.

Q. In other words, it is in the interest of competition to lessen competition to where the effect might be to—strike that.

In other words, it is in the interest of competition to lessen competition by cooperative action?

A. Yes, in my thinking, and this is true of many economists: No one assumes that competition, as you find it, necessarily produces the best result. It might by, say, a change in its nature sometimes produce a better result if one could define a result, which is very difficult, of course.

Q. And even though the method—in other words, the remedy means lessening of competition?

A. It is quite possible, yes.

Q. Well, is the basing-point method, in your opinion, 46016 one which lessens competition along that general line?

A. I think I discussed that question yesterday; that is, you have to answer that in terms of the possible alternatives, and as I recall I gave a rather long discourse on my analysis of the effect of the possible alternatives.

Q. Well, in your analysis of the basing-point method, is the effect of the use of the basing-point method to lessen competition?

A. By contrast with the full effect of possible alternatives, I do not think so.

Trial Examiner Norwood: Well, by contrast with what it would be without the basing-point system, can you—

The Witness: Well, that, it seems to me, raises the question, what would you have without the basing-point system, which I discussed yesterday already, as I recall it.

By Mr. Paulson:

Q. Does it tend, in your opinion, to make for—have restrained action in the quoting of prices?

A. Well, that restraint in quoting prices, it seems to me, arises not from the method but from the conditions of the industry.

Q. Well, the method results from the conditions, and consequently whatever results from the conditions is tied up with the method, too, isn't it?

46017 A. Well, the difference is that I stress the underlying factors, not the superficial phenomena at the surface, you see.

Q. But, consider for a moment the elimination of the basing-point method from the circumstances described in the hypothetical question, and consider that with the elimination of that method you would then have each man in the industry independently pricing, what would you say as to whether there would be a closer resemblance to true competition, or a less close resemblance?

A. I should think quite possibly after time would pass, after the initial effect, the effect there would be a state of some disturbance; I think, for a while, after things settled down, it might very well be just the opposite, represent less perfect competition from the standpoint of the words we have used.

Q. Now, let me see what you understand by the basing-point method. Tell me what you do understand by that?

A. By the basing-point method?

Q. Yes.

A. The single or multiple.

Q. Well, you have to make that distinction. What is the basing-point method? Tell me.

A. Well, under the basing-point method a quoted price at any given destination is figured, say, as the price where the lowest combination of base-price plus freight transportation cost gives you the lowest price.

46018 Mr. Leisure: If Your Honor please, I think the witness is entitled to have his question answered. Mr. Paulson asked him an ambiguous question, asked him to explain the basing-point method. When the witness asks him which one he wants explained, the single or the multiple, he gets no answer.

Trial Examiner Norwood: No, I do not think that the witness has any right to ask questions. He can refuse to answer that question with the information before him if he wants to. He is not up there to ask questions.

By Mr. Paulson:

Q. Have you finished your answer now?

A. I was answering on the basis of the multiple basing-point system.

Q. And you said that it was a method whereby the seller quoted from a base price plus freight?

A. No, he figured the price at a given destination by

finding the price that would be lowest considering the location of bases and their price and the transportation costs.

Q. And are those the essential elements?

A. Yes.

Q. Now, if superimposed upon that method they refused—the sellers refused to sell f.o.b. mill, is that a basing-point method, or something else, in your phraseology?

A. Is the refusal to sell a basing-point method?

46019 Q. No. Is the refusal to sell f.o.b. mill part of the basing-point method, or is it something else, in your phraseology?

A. If one is using the basing-point method only, it does not seem to me to be selling f.o.b. mill; that is, it is getting the business on a basing-point method. Now, you might vary from the pattern of the bacing-point method and take business at the mill.

Q. Well, in your conception of basing-point method, do you assume that there is or is not selling f. o.b. mill?

A. Well, the sellers right around the mill are buying f.o.b. mill, where there is no freight; that is, if the mill is a base mill. if not, it is figured from the base, as I have already indicated, but, as I understand it, and as I am discussing this, sellers have found it not to their advantage normally to sell f.o.b. mill in competition.

Q. Well, assume that the industry described in the hypothetical question, the long hypothetical question put to you by Mr. Bond, assume that in that set of facts this situation occurs, that many of the buyers want to purchase at—want quotations given to them at destinations, but that many also want quotations given to them f.o.b. mill, what is the natural expectation from an economist's point of view as to what would happen?

A. Yes. Well, I think you have two things here. The manufacturer in the first place would have to weigh the situation, which side of the line is the majority of

46020 dealers, where the majority of his business; in the second place, he does have to consider competition.

Q. That is just dealer business, are you considering there?

A. Yes.

Q. What about the business which does not go through dealers?

A. He has to weigh that, it seems to me, in terms of its relation to the total picture.

Q. And if 50 percent of the requests by buyers came from those who wanted to—who had no need for dealer service; in other words, from the Federal Government, we will say, what would be the natural expectation as to how sales would be made?

A. I should think that he would, in that case, would still think that 50 percent was more important because of its relatively more stable, that is permanent; the Federal Government, as a buyer, is not necessarily a permanent factor.

Q. Well, I am assuming that the sales to the Federal Government would not affect the dealer business, then what?

A. I am not certain that I follow your question. It is buying—then what, from what standpoint?

Q. Then what would you naturally expect to be the action of the seller?

A. With respect to what?

Q. Selling f.o.b. mill, or selling or refusing to 46021 sell f.o.b. mill?

A. That is, if selling to the Federal Government f.o.b. mill had no relationship at all to dealer business, but there is still another problem there, it seems to me, that is the problem of getting the business in competition as the manufacturer has to consider other mills also, and he will make his calculations with reference to other mills.

Q. Do you assume that would give him a loyalty to—well, strike that.

Explain further why that factor would be a factor, and how it would affect the result?

A. It is a factor in determining whether or not he will get that business.

Q. In other words, you would expect one manufacturer to refuse to quote f.o.b. mill because he did not know what his competitors were going to quote; is that it?

A. No, because he probably would be able to figure out how they would quote on a regular basis.

Q. And if he did not know you would assume that he would refuse to bid; that would be natural?

A. Not necessarily, no.

Q. Well, would it be natural for him to refuse, not

knowing what his competitors were going to bid, or would it be natural for him to bid?

A. He would try to bid on the basis on which
46022 he would have a chance of getting the business.

Q. Now, you are not answering the question. Would it be natural for him to refuse to bid not knowing what his competitors were going to bid, or would it be natural for him to bid?

A. You see, we have three things here, and you have brought only two of them in from the standpoint of analyzing mills' conduct. We have what is assumed to be desirable business. We have the effect upon the regular business, obtained through dealers.

Q. We have assumed that there is no effect upon the regular business.

A. But there is a third thing we have not assumed out of this, and that is the effect upon competitors. It seems to me that is always in the minds of the individual mill, also.

Q. Well, now, how do you answer the question?

A. That if there was a strong hazard, that bidding in a certain way would start a price war, for instance; induce retaliation in the commercial market, that that would act as a restraint upon the individual conduct of the mill.

Q. The natural thing for him to do would be to refuse to bid f.o.b. mill?

A. Yes.

Q. Well, has competition been lessened, then, by his action in refusing to bid?

46023 A. It might be; that is, if his action will start a price war then by contrast with that situation competition is lessened. The comparison now is the next period, not the following period, when after a price war you might get something else.

Q. Yes, and for a period competition would be lessened by his refusal to bid f.o.b. mill?

A. It might be, I say.

Q. Well, what makes you say "might"? Would it? You are the expert in the field. If we cannot get you to say that it would or would not be, where are we going to get that information? I submit you should be able to tell us, and I will ask your again, would it?

A. I am not trying to evade you, but in all these situations we have a number of variables, you see? Shall I

repeat? In all these situations you have a number of variables that the seller has to keep in mind. Unless one knows the nature of all those things it is very difficult to say, predict, the effect.

Q. Well, assume that all sellers took that same position and refused to bid f.o.b. mill, is competition lessened by virtue of those refusals?

A. Well, I should have to reply that you cannot answer that in a clear-cut "yes" or "no." You have got the problem of initial and long-run effect as well as—

Q. Well, the initial effect?

A. Pardon?

46024 Q. The initial effects; discuss it from that standpoint.

A. I would have to know the circumstances, as I have indicated already, I think, one might find conditions where that kind of bidding might produce a tendency towards retaliation to price cutting, you see, and, therefore, the immediate situation might be one of, say, an increase in price competition.

Q. If they did bid, there would be an increase in price competition?

A. No. If these effects followed that there was retaliation, say.

Q. Well, would you expect those effects?

A. I did not say that I expect those effects. That depends upon the circumstances.

Q. Well, would there naturally be retaliation?

A. I do not see any way in general to analyze that unless I know the capacities of the mills, the amount of business they are getting, the importance of their commercial business, the location, the demand, and so on and so on.

Q. Do you see how anybody in an industry could retaliate against one of its competitors who quoted a lower price if none of the other members could make a profit by retaliating?

A. If none of the other members could make a profit by retaliating, do I see any method of retaliation, is that it, on any basis?

Q. Would you expect retaliation?

46025 A. Not rationally speaking, I would not.

Q. You do not always expect retaliation when someone cuts beneath the prevailing price at any given destination, do you?

A. Here is where you get an element of what I think you might very well call irrational conduct. You get someone peeved, or you get jealous, or perhaps someone figures, "I can clean up," but—

Q. But you recognize practical limits—

Trial Examiner Norwood: Let him finish.

The Witness: No, I had not finished, Your Honor.

By Mr. Paulson:

Q. Excuse me.

A. Someone figured, "I can settle the situation, I can start a price war here and win it," you see.

In other words, you get the situation discussed yesterday in the terms of throwing restraint to the wind for a period.

Q. Well, do you, as a practical matter, do you expect to find that there is always somebody who is in position to retaliate?

A. In the industry as described, yes.

Q. In other words, you would expect, or do you expect a retaliatory action in every instance where somebody chose to bid an f.o.b. mill price to the Federal Government; is that right?

A. That is a different question. It need not hap-
46026 pen; but I think there would be underneath the con-
duct of the industry the assumption that it might very well happen.

Q. You make the assumption that it might very well happen, and then arrive at the conclusion that that is why sellers do not make such sales; is that right?

A. Oh, no. There might be other reasons that lie behind the facts of the case.

For instance, it might be that the Government business is not as attractive as other business, and there would be no reason to go out of your way to get the Government business.

Q. I am assuming, of course, that it is attractive from every other standpoint, and that it might result in other sellers following the same method, then is it natural—is it the natural thing to expect such seller to refrain?

A. To refrain from what?

Q. Making an f.o.b. mill sale.

A. I should have to recall again that he would have to figure out the circumstances, if he bought that would give him more trouble than the benefit from the Government business it would be rational for him not to bid that way.

Q. Well, wouldn't you have to assume that the method which he was using, and from which he would have to depart in order to make an f.o.b. mill price is definitely in his interest, in order to arrive at the conclusion at which you arrive?

46027 The Witness: May I have that question again?

Trial Examiner Norwood: Read the question.

(Question read.)

A. Yes, I should think so.

By Mr. Paulson:

Q. And what benefits would you expect him to be attempting to preserve?

A. I think the benefits he would be attempting to preserve would be a situation where he—it would not start retaliation that would produce a price war.

Q. In other words, of cooperative pricing; is that right?

A. The benefits of cooperative pricing?

Q. Yes.

A. Now, that is another question entirely.

Q. Well, if it is to the interest of the manufacturer to protect his method of selling, is it natural to assume that the method that he is protecting is one which takes away from the public benefits of competition?

A. I do not see that that follows at all; it seems to me there is a non sequitur there.

Q. Well, is the manufacturer interested in promoting active competition, or in lessening competition?

A. The manufacturer is interested in getting business without provoking a price war.

Q. In other words, he is interested in getting

46028 business at the highest possible price?

A. Not necessarily. It may be that he can get more business at a different level of price, from his standpoint.

Q. Well, what is the natural interest of a manufacturer, to get the highest possible price or to be philanthropic and try to put his product over to the public at the lowest price? What is the natural interest?

A. Are we still talking about the multiple basing-point system?

Q. Why, this is a specific question. You do not have any trouble with that.

A. Well, is it general or specific, I want to know.

Trial Examiner Norwood: Read the question.

The Witness: Is it applying to the multiple basing-point system? Is the question—

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Now, you can answer that without any reference to the basing point.

The Witness: Yes.

A. It is not necessarily to the interest of the manufacturer to get the highest possible price. For instance, you might be able to get—

By Mr. Paulson:

Q. With a commodity where the demand is not—

46029 Mr. Leisure: Let him finish.

Trial Examiner Norwood: Let the witness finish.

Mr. Paulson: All right.

Excuse me.

A. I was just going to state, you might be able to get $10 for this pencil, but that would not be good business. You might sell only one pencil. That is, one does not analyze his problems in terms of highest possible prices; he analyzes it in terms of prices which produce the highest net revenue, or—

By Mr. Paulson:

Q. The most highest, profitable business?

A. Well, it may be there would be no profit. The best price, which would be the matter of minimizing losses rather than making gain.

Q. Well, does the public benefit—

A. I think there was another part of the question. May I have that part of the question read?

Mr. Paulson: Yes.

Trial Examiner Norwood: Read it.

(Question read.)

A. The natural interest—remember, I do not like the word "natural," I prefer to speak of the business interest of the manufacturer—is not to get the highest possible price. That I have just indicated. Likewise, it is

46030 not normally business interest to be philanthropic.

The manufacturer tries to establish the price that produces the best possible results for him.

Q. For him?

A. I do not mean by that to indicate the manufacturer might not have a philanthropic motive sometimes.

Q. I am trying to find out what is the natural thing to assume. You have assumed over and over again that manufacturers would react in certain ways, so you generalize. I want to know what you are going to do in your generalization.

A. In economics we have a paraphernalia which gives us answers to that except we cannot go out in the market place and use it, but, theoretically, it gives us answers. The manufacturer tries to equate additions to total receipts with additions to total costs, and when that equation is established the price that will produce that equation is his best economic price.

Q. In other words, he would refuse to sell f.o.b. mill to the Government, you would expect, in the instance I put because he would get greater gross receipts by so doing?

A. I should have added that this equation is an immediate short-run equation, not with reference to say, what happens to time, and, therefore, it simplifies the problem too much because in an industry where there are small numbers you always have the problem what would
46631 happen as a result of your action. The result is that quite frequently it is rational for a manufacturer to compromise with the immediate hypothetical situation in the interest of the repercussion for the next time period.

Q. Well, he acts in the interest of greater gross profits, doesn't he?

A. I have indicated no gross profits at all. That is very foolish. He is interested in net revenue of the size of his losses, in the net sense, not the gross sense.

Q. That is what governs his actions in deciding whether to sell f.o.b. mill or f.o.b. destination I gave you?

A. That usually governs any action.

Q. Then, it does that, governs it, if it governs any it governs in that situation?

A. In the immediate situation, there may be other—

Q. "Yes" or "no."

A. (Continuing.) —factors looking to the future that may affect that behavior.

Q. And then are the competitive benefits to the public lessened or increased by virtue of the manufacturers refusing to sell f.o.b. mill under those circumstances?

A. Well, I discussed this problem of lessening time and again. It seems to me in this situation you have to analyze

it in terms of alternatives, and in terms of alterna-
46032 tives over a period of time I see no reason to assume that you would get a better result from the terms where you use—

Q. Now, you are going through another general reasoning.

A. Which is necessary.

Q. In order to get alternatives, you are assuming, are you not, if they did quote f.o.b. mill the basing-point system would be abandoned, that a uniform f.o.b. mill system would come into use instead, and that in the event that that happened then competitive benefits to the public would be less; isn't that what you have done?

A. I was carrying along—I assumed that your question was logical from the standpoint of—

Q. From economic—excuse me. Go ahead.

Trial Examiner Norwood: Well, did you go through those steps, or should some of them be eliminated?

The Witness: In my thinking I went through those steps, yes.

By Mr. Paulson:

Q. In economic thinking do you decide on all alternatives so readily to the propositions as that?

A. I am not deciding readily.

Q. But you are confident that that would be the alternative?

A. I feel rather confident, based on certain circumstances, that these would be effects as time passed.

Q. In other words, that the effect of one or more
46033 sellers bidding f.o.b. mill to the Government would be the institution of a new method of marketing in the cement industry?

A. No.

Q. That is what—

A. You might have a temporary situation—remember, I was speaking of short-run versus long-run. Quite possibly the mill might six months from now reverse its policy, you see, and go back to the original situation.

Q. Do I understand you do not think that bids, f.o.b. mill bids to the Government, could exist side by side with destination selling to the commercial world?

A. No, I did not say that. I merely indicated that it seems reasonable to me—

Q. Well, could they exist side by side?

Mr. Porter: Let him finish.

Mr. Paulson: I am sorry.

A. It seems reasonable to assume that those f.o.b. mill bids would be made with reference to the point of use in relation to competition.

By Mr. Paulson:

Q. Well, could they exist side by side, those two methods of selling f.o.b. mill to the Government, and f.o.b. destination to the commercial world?

A. As I defined them, yes, if the f.o.b. mill, made with relation to the destination.

46034 Q. If made with relation to the destination; in other words, if they are not derived f.o.b. mill could they exist side by side?

A. I should think so, if the members of the industry met together and say, "We are not going to get peeved, not going to start something," and likewise if there were not repercussions to the commercial—regular commercial business, if you could keep those markets separate.

Q. Well, doesn't it enter your mind at all in your thinking of these hypotheses that have been put to you, that the manufacturers who are refusing to sell f.o.b. mill are interested in preserving the status quo?

A. That depends upon what you mean by "status quo."

Q. The methods of selling that is now in use as described in the long hypothetical question.

A. I think in that sense that is correct, because I think that arises out of the conditions of the industry.

Q. You think that they are all interested in preserving what they have in the way of a marketing method here under the hypotheses in the question?

A. No, I am stating that they are reacting this way.

Q. Reacting this way—

A. But I can very well imagine that they might prefer another method if they could get it without hazard.

Q. Now, you said that the other method would
46035 eventually result in lessening the benefit to the public. Would the converse be true, that the benefits to the industry would be enhanced?

A. Of which?

Q. Of the alternative method which you say would inevitably follow.

A. I think it might possibly be true.

Q. That eventually—

A. In the long run.

Q. In other words, then, why wouldn't you expect it to be the natural thing for manufacturers to do would be to make the transition thereby in the long run?

A. Because I have indicated that the transitional influence could not arise spontaneously.

Q. Then, you assume it is natural for business men to be rather short-sighted?

A. No.

Q. Well, the long-time view, as I understand you, would mean greater profits in the pockets of members of this industry?

A. No, I did not state that it might have that outcome.

Q. And yet you think they would not turn to it?

A. There is no guarantee under free competition that the alternative would be achieved, you see, unless you compel them to.

Q. Now, there is an alternative, or there is not an 46036 alternative, which are you saying?

A. I am stating I am thinking of an alternative, say, that might be forced by the Government. Suppose the Government forced them to price differently, but on the basis of their individual activity I would not expect this alternative even though it might increase their net revenue.

Q. Well, supposing some of them did start to sell f.o.b. mill to the Government and to certain commercial purchasers, then what would be the structure? What alterations of the present structure would occur?

A. Let's see if I have the question.

Trial Examiner Norwood: Read it.

(Question read.)

A. Well, I thought I discussed that yesterday, that is, if you now have some departure from the basing-point pattern, say you are quoting f.o.b. mill in some cases, and, as I understand the question it is only in some cases to begin with, and again, as I understand it, that means discriminatory f.o.b. mill policy. You pick out this customer and quote him one price and pick out another customer and quote him a price rather than a general uniform f.o.b. mill price; it seems to me under the circumstances of the industry that method cannot maintain itself. Rather promptly you would have a pattern of some sort built up, in other words, that could only be a temporary situation. You move in one direction or the other.

46037 Q. Well, which direction do you think it would move in?

A. Under free competition—

Q. What?

A. Under free competition, move back to the basing-point method in most conditions.

Q. Well, if it moved back, I think you have changed your position. You say it would move back to the basing-point method. A little while ago I think you said it would move to the uniform f.o.b. mill system.

A. Oh, no.

Q. But now you say it would move back to the basing-point method, then what fear of retaliation would a business man expect?

A. From what?

Q. You assume, now, that it would move back to the—from that from which it departed.

A. Because—

Q. Then why would a business man fear to depart?

A. Because that departure creates conditions that run contrary to his interest.

Q. If it runs contrary to his interest then does it follow that it runs in the interest of the buyers?

A. It might or might not. I think at—

Q. Well, whose other interest could there possibly be, the sellers or buyers?

46038 A. I mean, one would have to know the circumstances, but if this is what you want—I can agree that in some instances certain buyers might get lower prices because of the breakdown of the pattern; I think that is quite possible. But my point merely is that that would start something which a firm would not wish to start—it would start retaliation.

Q. I am still trying to find out what you think of the competitive benefits from the public standpoint under the alternative proposition.

A. My reply here as in the past is that you have got to break down the analysis in terms of initial and ultimate effects, and if you assume free competition the ultimate effects would be the basing-point system restored. If you do not assume that you might get other effects.

Q. Now, you assume free competition; you see, free competition is in one part of your statement, and in the other, in contrast to it, you say basing-point method. Do

I understand you consider that the basing-point method is not free competition?

A. I did not state that I use these alternatively.

Q. Well, what did you term—

A. My whole analysis is predicated on the assumption that you have free competition on the basing-point method.

Q. Well, what term would you use to describe that situation where the sellers of cement sold to the Gov-
46039 ernment f.o.b. mill and to the commercial world f.o.b. destination?

A. May I have that question?

Trial Examiner Norwood: Read it.

(Question read.)

A. May I ask how the f.o.b. mill quotations are assumed to be made, in the question?

By Mr. Paulson:

Q. Assumed to be made f.o.b. mill to the Federal Government.

A. I know, but you—

Q. Not derived—what we have termed pure f.o.b. mill prices here.

A. That, again, is a new word to me. What has "pure" to do with it?

Q. An f.o.b. mill price which is made de novo, not derived; a bid is received, and a manufacturer, without regard to any destination, quotes what he feels he can quote.

A. That doesn't make sense to me.

Q. You do not think a manufacturer would ever offer his goods for sale without regard to some previously made price; is that what is in your mind?

A. It might be put in the pattern of the industry. I don't think it is normal to be.

Trial Examiner Norwood: Now, Doctor, he does not ask you whether it is normal or not. He asks you to assume that.

46040 The Witness: May I have the question again?

Trial Examiner Norwood: Did you think he asked you to assume an abnormal situation?

The Witness: Yes.

Trial Examiner Norwood: Read the question.

(Question read as follows:

"Q. An f.o.b. mill price which is made de novo, not derived; a bid is received, and a manufacturer, without re-

gard to any destination, quotes what he feels he can quote.")

The Witness: That was not the question.

Mr. Paulson: The Reporter has not gone back far enough.

Go back a little further.

(Question read as follows:

"Q. Assumed to be made f.o.b. mill to the Federal Government. Not derived; what we have termed pure f.o.b. mill prices here.")

A. That can be derived—

Mr. Paulson: That still is not the question.

By Mr. Paulson:

Q. The question is what term you would apply to that situation where sellers of cement sell to the Government f.o.b. mill and to the commercial world f.o.b. destination.

A. I have no term to cover that situation, if you 46041 want a term.

Q. Is that free competition?

A. Was that what you meant?

Q. Yes.

A. It might very well be free competition.

Q. Now, let me get you clear. Do I understand that you take the position that f.o.b. mill selling in the cement industry, as described to you in the long hypothetical question, could not exist under free competition?

A. Oh, not at all, no.

Q. Then, why would it not exist under free competition?

A. It does not seem to be rational to expect it to happen, but scattered instances of the sort of thing you mention might arise in free competition; but I take the position that general abandonment of the multiple basing-point method in favor of the f.o.b. mill system, in my judgment, would require some large extra pressure, like agreement or Government action.

Q. That is because the interests of the manufacturers of cement lie with the basing-point method of selling; is it not?

A. Under individual action.

Q. Well, I do not care which action; I say it lies with the basing-point method of selling?

A. Although it is not the best that I can set up, it

serves their interest. I can set up a method in my mind that would better serve them.

46042 Q. But this method which was described to you in the long hypothetical question serves the interest of the industry better than the f.o.b. mill selling?

A. Not necessarily, because it follows from the conditions—

Q. Now, let me get you clear, Professor.

Mr. Porter: Let him finish his answer.

A. It follows from the conditions but whether it serves them better is quite another question.

Q. You said they could immediately depart from the f.o.b. mill method of selling and return to the basing-point method of selling?

A. Yes.

Q. Why?

A. Because that follows from the conditions of the industry.

Q. That is a bit abstract, if you will permit me—

A. That is the type of behavior I can understand, because it is rational.

Q. Why is it rational? Is it rational because it is in the interest of the manufacturer?

A. Because when a manufacturer, say, comes up to the breaking point between the markets, he has this alternative, whether to cut prices or come in on the going prices.

Q. Which is more in the interest of the manufacturer, f.o.b. selling or the basing-point method?

A. Assuming free competition is to his interest

46043 normally to figure the prices on the nearest basing point—

Q. Why?

A. May I finish?

Q. Yes.

A. —rather than reducing his own mill price, to try to get that distant business—

Q. Why—because the profits are—or tell me why?

A. Because, if he is forced to get business on the basis of reducing his prices merely at the mill, he gives up all benefits of location, and as I analyze it I think his prices would tend to go down below the costs, if there were a number of mills in the area where there was a small demand.

Q. I understand you to say that a manufacturer waives the benefit of location if he sells f.o.b. mill; is that right?

A. No, no.

Q. He waives the benefit of location if he sells f.o.b. destination, using the basing-point method?

A. An isolated manufacturer under the f.o.b. mill system, I think, would get more benefits of location than under the basing-point method or system.

Q. But, by and large, as the facts have been posed here for you, you can see that the majority of manufacturers derive greater benefits out of the basing-point method of selling; is not that correct?

A. I can answer only by contrast with alterna-
46044 tives, and I can think of better alternatives.

Q. Now, let us go back to the question which was asked you several times; namely, what about the competitive benefits to the public, under the basing-point method and the f.o.b. mill method?

A. As I have indicated, I think, a number of times now, to analyze that you have to break it down in terms of the initial and long-run effects.

Q. Well, we have gone over that, but what about the degree of competition under the two methods, starting with pure competition as a measuring post?

Mr. Leisure: May I have that question read?

Trial Examiner Norwood: Read it.

(Question read.)

Mr. Leisure: It seems to me that the question is not finished.

By Mr. Paulson:

Q. Which is the further removed from pure competition?

A. Is that what you mean now?

Q. Yes.

A. That is the f.o.b. mill method on a uniform basis or the basing-point—

Q. Not I have never said anything about the f.o.b. mill—on a uniform basis—f.o.b. mill selling.

A. Well, I have taken the position that f.o.b. mill
46045 selling—individual bargain basis—cannot be maintained; there must be a pattern.

Q. Well, it would still stay in business on a bargaining basis; it would stay in business for a certain period of time, would it not?

A. A brief period. I don't know how long.

Q. Maybe three years?

A. Well, that sounds like a considerable period. It is difficult to—

Q. Well, if maintained for two years you have something to contrast; you can contrast it in terms of pure competition; that is, in terms of their degree of departure from true competition.

A. Now, you use another word. You have used "true" competition. Before, you used "pure" competition. Which do you mean, I ask?

Q. Pure competition.

A. It is an extremely difficult question to answer, because you have not the conditions of pure competition in either case, you see.

Q. Well, then, we will have to consider it from the standpoint of restraint or lessening, won't we?

Mr. Leisure: What is that question?

Mr. Paulson: I am asking him if that is what economists would have to do.

A. No; that is not the question. You asked me, 46046 as I understand it, to use pure competition as a touchstone, against which to measure these methods.

By Mr. Paulson:

Q. Right.

A. And my reply is that under both conditions you have such decided departures from pure competition that it is extremely difficult to apply.

Q. Which would you say would come closer to the touchstone, as you put it—I said milestone or measuring post—the one or the other?

A. It seems to me that I cannot give an offhand answer to that question. That is especially because you are confining your analysis to a short period of instability, whereas the basing-point method represents something that has been going on for years, and where we can analyze the effects. Here we have an inertia period.

Q. Tell me this: Wherein do you see any departure from pure competition in the f.o.b. mill selling?

A. Under pure competition, in order to get the characteristic results that were assumed, one must have a large number of buyers and sellers congregated at a given point. In other words—

Q. Well, if you had nine sellers—

Mr. Leisure: Let him finish his answer.

Mr. Paulson: No.

46047 Mr. Leisure: I object. I ask that the witness be allowed to finish his answer.

Trial Examiner Norwood: I think Counsel may ask another question, if he wishes.

The Witness: Well, I—

Mr. Leisure: I want to object strenuously to the procedure.

Trial Examiner Norwood: Yes, all right.

A. If, by and large, a number of sellers—

By Mr. Paulson:

Q. Let me interpose there to ask you whether a large number of sellers is nine?

A. No; definitely no.

Q. How many is it?

A. I don't know how many it is in terms of actual numbers. It is enough of them so that no one can have appreciable influence upon market results, and that would vary with the circumstances.

Q. Go ahead.

A. Now, if you had a large enough number of buyers and sellers concentrated at one point, under the conditions of the perfect or pure market, say, then you could get one price in that market. Now, if there are buyers out from that market who likewise want their product, the price then, under those assumptions of pure competition, will be a central market price, plus the transfer costs out

46048 —and I use the words "transfer costs out" advisedly; not transport costs, although, under pure competition, I do not think the distinction between "transfer" and "transport" costs is significant; so I need not worry about that at this point, but I keep it in mind for further reference. The result is that you get a kind of configuration that is so common in economic analyses. The problem here—if we had a blackboard, with rising prices as you go out and add transport costs, say, to that central market price; but if, on the other hand, you have not pure competition, you see, at the central market, or particularly if you have scattered locations of plants, one plant here, three there, and so on, scattered geographically, and demand likewise is scattered, you cannot, by any possible means, analyze that problem in terms of pure competition, and you cannot create the conditions of pure competition except by atomizing the cement plants, having so many of them at

every point, so that there is only one single competitive price clearing the market at that point.

Q. In other words, you cannot appraise the degree of departure from pure competition, in either instance?

A. I cannot measure it.

Q. You cannot measure it?

A. No.

Q. You do not think it is further—

A. Now, wait. You are asking me about the in-
46049 terim period economic analysis on its firmest foundations, say, with the effects of long-run tendencies, you see. I am willing to discuss what I think might happen in the long run.

Q. Are you prepared to say which of the two methods, the f.o.b. mill or the basing-point method, is closer to pure competition?

A. I am not—

Q. You cannot say that?

A. Not for the interim period.

Q. Well, if I assume it is permanent, then can you tell us?

A. I think it most likely that the maintenance of the f.o.b. system would create conditions through time that would make for a less perfect market.

Q. In other words, you think that the basing-point method of selling is closer to pure competition than the f.o.b. mill selling?

A. I did not state that. I merely stated that if you have the other method become a permanent method, that the consequences of that method, in my judgment, would be very likely to be such that you have a less perfect competitive situation.

Q. I have assumed no changes. I have assumed f.o.b. mill selling.

Trial Examiner Norwood: He said ultimately it would become less perfect.

The Witness: Yes.

46050 Trial Examiner Norwood: Is that right, Professor?

The Witness: That is right; yes.

By Mr. Paulson:

Q. Why?

A. I expect, for one thing, that once this pattern be set up, this secret price cutting would be more difficult in that

pattern, because whenever a mill gets beyond its economic breaking point into another mill's territory, it is obvious that it is thereby a violation of the price structure; and, likewise, at any given point, you have a small number of sellers in competition; and, in the third place, I am inclined to think that market leadership would become even more pronounced under that condition, because that breaking point was so fixed. At present, you see, they have a very vague—

Q. But, on the other hand, you would not have any—

A. May I finish my answer?

Trial Examiner Norwood: Let him finish his answer.

A. In the fourth place, if the things I have just posited did not happen then I should expect to see a wave of mergers, and so on, in industry; so that the consequences of that problem would probably make a different competitive pattern.

Q. Well, while it is in this state of flux—while it is in this state of flux, which is closer to pure competition?

A. In the state of flux it is difficult to answer, because it might be below the result of pure competition. In
46951 other words, imperfect competition, with certain conditions, may be much more strenuous competition than pure competition. In other words, prices might go below cost considerably, and we would have to know the circumstances before we could answer that question.

Q. Would you not expect more rivalry, or would you expect more rivalry, while it is in the state of flux, between sellers in all of the avenues under the f.o.b. mill system than you would find under the hypothetical question described in the present—or attempting to be described—in the present situation?

A. Now, if by f.o.b. mill system you mean the variable f.o.b. mill system?

Q. Yes.

A. I think the greater connection between those during the interim period might create a greater competitive pressure.

Q. And mergers, you think, would be an attempt to get away from that situation?

A. If say, the pressure of competition consistently makes it difficult to get a minimum price in order to maintain plant equipment, I should expect that that is one attempted solution.

Q. You would expect that excess capacity would be driven out in a state of flux; would you not?

A. No, not necessarily.

Q. Do you think inefficient plants could live, side by side, with efficient plants, during the state of flux?

46052 A. A poor plant might be forced into bankruptcy and be picked up at a very low price such as would allow its operation by the new firm.

Trial Examiner Norwood: Well, would not that sort of operation have some connection with the following mergers?

The Witness: It might be picked up by a big company, yes; but if not it might be picked up by someone who is willing to take a chance; he gets the mill for a song, you see.

By Mr. Paulson:

Q. Cross-hauling would be eliminated thereby, would it not?

A. Under the non-uniform—under the variable system, you would not have cross-hauling entirely eliminated. Some of it would be.

Q. Some of it would be?

A. Yes; that is right.

Q. There would be less cross-hauling?

A. Yes; I should think so, but that becomes a rather difficult problem also.

Q. Do you think that there would be any tendency to reduce the industry to a backyard industry?

A. That is a technical engineering question, and my offhand answer would be no.

Q. Assuming that the most efficient plant in the
46053 cement industry today is a 250,000-barrel plant; assuming that it has been demonstrated that 250,000-barrel plants are the most efficient, from experience, then what would you expect to be the result?

A. I don't know whether that still gives you enough mills at a given point for pure competition. How many mills do you have at a given point, then?

Q. Assume that a very appreciable consuming center had cement deposits within a 50-mile radius of it—

A. For how many plants?

Q. Well, would you expect plants to become decentralized and established more close to—

A. Yes; I should think you would expect plants to spring up. Whether the plants would decrease in size to 250,000 barrels is an engineering problem.

Q. Are you prepared to appraise the industry on the basis of the hypothesis given to you in the long hypothetical question here, as to the establishment of plants, their size and location, from the competitive standpoint?

A. That question is very vague to me.

Q. Well, does it appear to you from the information that was given to you in the long hypothetical question that plants are located as you, as an economist, would expect to find them located, after competition had been free and full for a considerable period of time?

46054 A. You see, that becomes a question of fact, a knowledge of the kind of materials used, the location of those materials, the location of demand. I understand that the assumptions are a fluctuating demand, and, you see, that shifts regionally, and I do not see how an economist could give a snap judgment on that question.

Q. So that if there are many deposits of cement rock throughout the United States which are untouched, but which lie much closer to the big consuming centers, than those which are being mined, would you say, as an economist, that competition had been vigorous and effective, when the result is as I have described it?

A. I do not know, I must confess, whether there are other factors besides deposits of cement rock. There may be other materials which are employed.

Q. I assume all of the other materials, and that there are many natural places for the manufacture of cement which are not being used today, near consuming centers. Then, would you say that that would indicate to you that there had been restraint placed upon competition?

A. No, not necessarily. There are a lot of coal reserves that are not tapped, I assume.

Q. You think it is perfectly natural that consuming centers should receive their cement from long distances when there are deposits and facilities for making it close to those centers?

46055 A. To answer that you would have to have other information, particularly the cost structure for various sized mills. If, say—

Q. I am assuming that mills can be efficient at 250,000 barrels, which is possibly one-fourth of the size of the average mill now in existence.

A. If mills can be equally efficient, say, at that size, and if the materials are located as you have indicated, I should think that you would have more of those smaller mills scattered around, under any situation.

Q. In other words, you expect competition to place industry most economically, advantageously.

A. Now, if you say—

Q. Is that it?

A. I can give you a long classroom lecture on that. I do not like to do that here. I do give lectures on that subject, and there are so many factors that operate there—if you make certain simple assumptions, then the answer is "yes," that you expect industry to be located at the point of minimum aggregate transfer cost, but by "transfer costs," I do not merely mean "transport costs,"—the cost of selling through space, you see.

Q. Well, that is one of the benefits that cause the American public to place competition into its public policy, is it not?

The Witness: May I have that question?

46056 (Question read.)

A. There is that word "competition" again, you see. If you ask me what is in the minds of legislators—I hope I am not asked to interpret what is in their minds—it might very well be—

By Mr. Paulson:

Q. Economists expect a lot of things from competition, don't they—a lot of benefits from competition?

A. I have covered that, I think. Under some conditions, yes; under other conditions, no.

46057 Q. Doctor, did you bring with you the copy of the hypothetical question?

A. I think it is down under my hat. I think I have it in a whole group of things. It is the same question,—still the same question?

(The witness leaves the witness chair and returns with papers.)

Q. Yes. You were pointing out to us the factors in there which negative collusion, in your opinion.

A. I am to continue going through the question?

Q. Yes.

46058 A. The first line of the next paragraph it seems to me fits into the question; that does not indicate—or how is the word, does negative?

Q. Negatives the inference.

A. Does not negative the inference of free competition.

Mr. Porter: No; negatives the inference of collusion.

The Witness: Oh, negatives the inference of collusion.

A. "Whenever a lower price is openly quoted by one manufacturer, other manufacturers selling at that destination have found it necessary either to reduce their delivered price to meet this lower price or to withdraw from actively soliciting business at that point."

It seems to me that situation where manufacturers do openly quote prices, and others are forced to meet those prices in soliciting business, indicates the absence of collusion.

Shall I continue?

By Mr. Paulson:

Q. Yes. Go ahead.

A. The first part of the next sentence: "It has been the experience of each manufacturer that an open reduction in prices is met immediately by competitors."

46059 It seems to me his wording there almost by definition is meant to be "by competitors."

Continuing: "Each manufacturer has invested considerable time and money in developing channels of distribution, such as dealers and contractors." That would suggest to me there has been no collusion concerning the methods of distribution, that they seek to develop their own channels of distribution. In other words, they have not frozen the distributive structure.

Q. I did not limit you, when I asked you the question to begin with, and I intended to, and I do now ask you to answer on the basis of what negatives collusion as to price.

A. Oh, pardon me. All of the next sentence: "A mere reduction in price does not ordinarily drive a manufacturer out of a consuming area . . . ." That suggests to me that he remains there and fights for tonnage in that area.

Then: "It has been the experience of each manufacturer that an open reduction in price has, from time to time, provoked further reductions in price by competitors." It seems to me that is rather clear-cut indication they are free to act independently, and then following: "Such open reductions have sometimes resulted in price wars." If there were collusion of course, you might

argue that the collusion broke down, that the agreement broke down, but it seems to me there is no necessary inference concerning agreement from this state of
46060 affairs. You can have a price war, say, within the assumptions of the absence of collusion. In fact, I think it is even a stronger assumption than the other one.

"For more than twenty years most manufacturers have regularly broadcast their prices to the dealer trade." This suggests to me that it is part of their regular activities, and they consider it important to broadcast their prices. If they had worked out an agreement, I do not see why it should be so important to aggressively and regularly keep informing the trade as to prices.

Q. Assume that they cooperatively broadcast the prices, would the inference of collusion be negative?

A. That means, you mean they have some central body or association?

Q. Yes, or other equivalent means for making price announcements in common, one announcement for all, or all making the same announcement, which amounts to the same thing.

A. I can imagine a situation where you figure you save expense by having a central body doing the printing, and so on, running off price announcements. I have seen that done, by the way.

To illustrate, I know of a cooperative—

Q. No, never mind. Just tell me whether or not, if you assumed that all of the manufacturers announce the same price by virtue of a cooperative scheme, would you
46061 consider that that negatived the inference of collusion?

A. Well, it would depend upon the circumstances. If they were doing it to save expense, say, in announcing their prices it would not necessarily.

Q. No. They were doing it so as to each announce the same price so as to not have any differences in the price announced, that is what they were doing it for. Now, under those conditions would that negative the inference of collusion?

A. I do not think it would completely negative it. It would look a little more suspicious to me.

Q. Look a little like collusion, wouldn't it?

A. Yes.

Trial Examiner Norwood: Do you mean if they were

sending out these announcements according to a pattern or concerted plan?

The Witness: Well, I assume that the central office sent out announcements for all the trade.

Trial Examiner Norwood: Assume they sent them out for each office according to a pattern or concerted plan, would that change your attitude?

The Witness: Now, do you mean that each member of the industry involved sent out announcements according to a pattern?

Trial Examiner Norwood: Yes.

The Witness: Yes, that would change my an-
46062 swer, because that is what they are doing. There is a pattern in the industry to which they must adapt themselves.

Trial Examiner Norwood: Then that would not change your answer as to its negativing—

The Witness: Oh, yes, that is if they do it individually I see no inference as to collusion, even though they have the same prices.

Trial Examiner Norwood: But if they do it according to a certain plan, they might suggest collusion; is that what you said?

The Witness: The word "concerted," Your Honor, again bothers me.

Trial Examiner Norwood: What?

The Witness: The word "concerted" again bothers me, because it seems you use a—to suggest that they agreed to do it. If it merely means that they happen to strike the same price points it is different.

Trial Examiner Norwood: Yes.

The Witness: "In the event of an increase no sales are made at the higher prices unless all competing companies announce that they are following the increase, and no sales are made until the quotations of all the companies competing in a given market have become effective." It seems to me there would be no necessity for that
46063 waiting period, and for that particular period if they had agreed beforehand as to what their behavior would be.

By Mr. Paulson:

Q. Well, that would not negative an inference that the use of a basing-point method was agreed upon between them, would it?

A. This does deal here with the price; this is not the method; but the prices, in my judgment, are much more important than the method. I address myself to the price as evidence more than the method.

Trial Examiner Norwood: Well, I do not think that answers the question, quite.

Read the question.

(Question read.)

A. No, I do not think this would in itself establish anything.

By Mr. Paulson:

Q. Now—well, go on, Professor, please.

A. "Any manufacturer, no matter how small, can initiate an effective decrease in price." That seems to me, connotes an independent action, the absence of collusion.

Q. That, again, does not negative the inference of, that the method, the basing-point method, is used by agreement, does it?

A. It would seem rather unreasonable to me to agree upon a method, and then it run at loose ends along this line.

Q. Well, that is the nature of the method, isn't it, that any manufacturer, no matter how small, can initiate an effective decrease in price in your conceptions of 46064 the method, isn't it?

A. Under the method as established, as I think spontaneously in the industry, if they were colluding it seems to me they would not allow this sort of situation where any member of the industry—

Q. You are saying "it seems to me," you are saying you do not think it is wise to adopt the basing-point method, rather than this, does not give rise to an inference that it is not—

A. No, I am trying to state that if you assume that there is collusion it seems to me that it would address itself to the important things, which are the prices themselves, and freedom of price, and that why in the world should they collude as to the basing-point method, and then allow any member in the trade to initiate price decreases.

Q. Well, if the basing-point method tended to lessen competition you would expect business men to come to an agreement to use it, wouldn't you?

A. Not if there were more effective methods.

Q. If it is effective and in their opinion sufficiently ef-

fective method, it would be reasonable to assume that they would agree to use it, wouldn't it?

A. It is more reasonable to me to assume that if the members of an industry get together and work out an agreement that they will try to do the best job rather than the second or third best job.

46065 Q. And do you think that an outright price agreement has proven to be a more effective method of fixing prices than the use of the basing point method?

A. You are asking me a factual question now?

Q. Yes.

A. It is difficult to answer because one cannot—I do not know, in detail, you see, about some of these methods as employed in, say—

Q. Have you read the Sugar Institute decision?

A. I do not think I have entirely. I think—

Q. Did you read the opinion of the lower court, Judge Mack's opinion?

A. No, I am sure I did not do that.

46066 Q. Well, Professor, you did not think that it would—I understand you to say that you do not think it is reasonable for business men to adopt the basing-point method of fixing prices, to fix prices or stabilize prices because you think there are better methods of arriving at that result; is that correct?

A. By that I have in mind essentially that in my judgment if the industry had established a basing-point method by collusion they should have, rationally, implemented that method with something else to make it work more effectively.

Q. And what suggests itself to your mind as a good way to make it work more effectively in the direction of price stabilization and lessening price competition?

A. One would be to cut down the amount of impenetration of territories, the freight-absorption, the selling cost, and so forth, that arise from duplicating in territories.

Q. Would eliminating discrepancies in dealers' policies be another one?

A. That is a different category because unless important dealer policies are uniform dealers will transfer in an open market.

Q. Well, to reach a lessening of competition it would be well to eliminate discrepancies in dealer policies be-

46067 tween manufacturers; isn't that true?

A. I am not certain that I have the whole question, now. May I have it?

Q. We are trying to improve upon the basing-point method now.

A. Yes.

Q. Make it an effective method for basing prices and eliminating competition; that is what we are doing, and I am saying, suggesting to you, that the elimination—that the unification of dealer practices and policies between the sellers would help in that direction.

A. Well, I should think that would be true of any method that you get a considerable conformity concerning important dealer practices.

Q. Yes, sir; and the rivalry to obtain dealers and distributors is a familiar form or avenue of competition between manufacturers, is it not?

A. Yes.

Q. And if they come to an agreement as to their offers to dealers to buy, so that one does not offer any better proposition than the others, that avenue has been closed; has it not?

A. Well, I look at it, I think, quite the opposite. In order to obtain dealers, you would have to make as good a deal, so to speak.

Q. Yes; and if you agree with your competitors not to give any better deal than the other fellow, you have
46068 closed that avenue of competition, have you not?

A. If you have agreed not to give a better deal than the other fellow, you are still competing, and you have frozen methods of competing for dealers.

Q. Now, another way to improve upon the basing-point method and make it successful in eliminating competition would be to eliminate diversions of shipments in transit; would it not?

A. Another method to improve upon the basing-point system?

Q. Yes.

A. It seems to me that that springs rather definitely out of the basing-point system, of necessity, if you are going to operate like that.

Q. You would also, to make the basing-point system work effectively in the direction of freezing competition, want to refuse to make any sales f.o.b. mill; would you not?

A. I do not say "freezing competition." I said freezing some of the methods that are involved in competition.

Q. Yes.

A. No, what is the question?

Mr. Paulson: Read the question.

(Question read.)

A. Yes, it seems to me that is inherent. It is part of the system; it is a part of the competitive problem of meeting competition at the buyer's destination.

Q. Would you freeze that avenue of competition
46069 if you eliminated it entirely; would you freeze it out?

A. Well, as I say, I could approach this conversely. You see, from my standpoint, you are not there competing unless you are on the same level. Now, if you go below, that is competition, that is aggressive competition, but it could not last for long; somebody has to stop. There must be some stability introduced there eventually; so it seems to me quite rational—

Q. What other means suggest themselves to you on the basing-point system in the direction we are speaking of?

A. From what standpoint, may I ask you?

Q. From the standpoint of eliminating competition in the industry?

A. Oh, no, that is not what I am talking about. I am talking about it from the standpoint of making the basing-point system produce from an income standpoint more effectively in the industry.

Q. Well, I think that is the same thing.

A. It may not be.

Q. Well, to produce from an income standpoint would mean that you would have to keep prices at a higher level.

A. No, not necessarily. It might be a lower level, if some of those costs can be reduced—the cost of freight absorption, the cost of competitive selling—

Q. Now, I know just exactly where we are, Professor. I am of the opinion that you have switched around, but I may be wrong. I understood you to say, though—

46070 Trial Examiner Norwood: You were discussing this from the standpoint of restraining it, were you not?

The Witness: No; I was discussing this from the standpoint of making it a better instrument.

Trial Examiner Norwood: Making it less competitive; were you not?

The Witness: No; not necessarily.

By Mr. Paulson:

Q. You were discussing it from the standpoint of making it a more effective combination?

A. No; not making it a more effective combination—making it a more effective avenue by minimizing the net losses.

Q. What other improvements would suggest themselves to you?

A. I think the thing I stressed is the essence of what I have in mind. That is, it would be rational to implement the system by some sharing of markets, some exchange of customers, in order to keep freight absorption costs and selling costs down to a lower level.

Q. Well, assume that we have a ramified system of statistics brought together and disseminated, which makes it very plain to each of the members the volume of business being obtained by each place that the cement is being shipped to. Would that, in your opinion, suffice as a means for limiting freight absorptions?

A. No, I think it might work quite the opposite, 46071 you see where business is good and get in there.

Q. Do you think that the natural reaction of a manufacturer would be to extend his production when he sees statistics showing that there are large supplies on hand and a slackening of demand, or to increase his production?

A. Well, as I judge this industry, it is one where you do not tend to build up stocks. You tend to keep the production pretty well down to a short-term market. That may be a factual statement, but I would judge that this is that sort of a situation.

Q. Now, getting back again, as I understand, you do not see that this method is employed by reason of an agreement, because it does not look to you to be a very effective method of securing the greatest profits and maximizing net losses?

A. That is right. That is one reason; yes.

Q. Does it appeal to you as being superior in that respect to the f.o.b. mill method of selling?

A. Well, it seems to me that an f.o.b. mill method of selling, properly controlled, could produce a lower cost and higher income, on that basis generally of the industry—if controlled.

Q. How do you mean "if controlled"? What kind of control?

A. By agreement in the industry, so that these forces, as I have analyzed them, do not work themselves out these long-run forces that I have mentioned.

Trial Examiner Norwood: Something like Gov-
46072 ernment regulation.

The Witness: That would be another possible procedure. Theoretically it might be difficult to limit the basing-point method of selling. One might limit the freight absorption under the basing-point method of selling. I think this would be very difficult to do, because the demand may change; the relative position of the mills changes. It would be very difficult, in the short run, to administer, say, by governmental agency, and I imagine it would require considerable administrative detail, and could be done only with difficulty.

By Mr. Paulson:

Q. Then, as I understand it, notwithstanding the fact that the basing-point method does not appeal to you as being as effective as the f.o.b. mill system, from the standpoint of the interests of the manufacturers, you still believe that the basing-point system was naturally developed and used by the members of the industry?

A. Under the assumptions; yes.

Q. In other words, you are assuming that they chose a device of marketing where there was no alternative basing point?

A. No; I am not assuming that they chose anything. I am assuming that they really did what was reasonable.

Q. Well, at some point in the history of the in-
46073 dustry, the manufacturers of cement determine the methods of marketing that they would use?

A. You mean that they got together in a big convention hall?

Q. No.

A. It is obvious, of course, when you get—

Q. You know of no law prescribing a certain method of marketing in the cement industry, and particularly the basing-point method; do you?

A. None except economic pressure.

Q. I understood you to say, in answer to the long hypothetical question, you consider that the adoption of the basing-point method was a natural method for them to choose?

A. Well, I higgled a bit over the word "natural," because I have a subjective reaction against it. I would call it "spontaneous."

Q. You said that they chose it of their own free will—spontaneously.

A. Yes.

Q. And yet you say that the f.o.b. mill system would have resulted in greater profits and lower net costs?

A. But that system, in my judgment, required agreement to produce that result. We were talking here about results under free competition versus results under collusion.

46074 Q. Why does it seem natural to you that the cement industry would adopt the basing-point method, Professor?

A. I have tried to indicate—I don't know how many times—when you have mills scattered geographically, and usually a small number at any points; when you have scattered demand, and a shifting, fluctuating pattern; when you have relatively small numbers of sellers at any given point; when freight costs are a significant proportion of the total costs, but not so significant as to maintain cement merely in a local market, as I assume, for instance, probably sand and gravel, tend to be in relation to the value of the product; when the manufacturers have a high proportionate and absolute fixed overhead cost, and when the total demand for the product tends to be inelastic, and when the product is homogeneous, that under those conditions it seems to me entirely reasonable that firms independently would use this pricing method in meeting competition.

Q. In meeting competition? Do you mean it injects cross-thinking there, when you say "in meeting competition"? Why did not the first one do it, the one who leads the competition?

46075 A. In this industry I would say almost anyone leads competition, but I think, if I may be allowed to add this, that the concept of leadership is rather a misleading concept, often. One looks for some big one, a big firm, to lead off, but when you have the conditions I described, a small firm can make itself effective.

Q. Would you expect the members of an industry, as described to you in the long hypothetical question, cooperatively to seek to sell the basing-point system to the

public; and I mean by selling, secure their acquiescence in the continued use of it?

A. You mean, for instance, to have a public relations agent say—

Q. Yes.

A. —or something like that?

Q. Yes.

A. To go out and build favorable public opinion?

Q. Yes.

A. I should think it reasonable that this industry, like any other industry, would desire favorable public opinion, especially in our environment, the social environment.

Q. Why would they argue for that? Would you expect it reasonable for them to argue for something which you say is so imperfect from their standpoint?

A. I should think they would be trying to interpret themselves to the public to get favorable public opinion.

Q. Why are they trying to sell the public in fa-
46076 vor of this system, which you say is so imperfect, from their viewpoint?

A. Well, I look at this thing somewhat differently. The public, let us say, has certain sets of ideas, or is in danger of getting certain sets of ideas; so the industry is trying, let us say, to indicate that those ideas are unjustified.

Q. Do you find it to be a frequent thing that competitors organize to advertise to the public that they are acting as competitors?

A. There are many group advertising campaigns in this country. At one time I knew of dozens of them.

46077 A. At the spur of the moment, I do not think of a case, but quite possibly, given time, I could, because I have paid some attention to industry advertising, sales promotional programs, but not recently.

Q. But if they are competing they should advertise it to the public or the public will not know about it?

A. If the public, from their standpoint, are in danger of thinking that they are not competing, it seems to me quite reasonable that they might try to build up a different set of ideas.

Q. To change the subject a little bit, Professor, if each destination point is a market, as I believe, under the hypothesis, you said it was, in this case—did you say whether it was or was not?

A. Yes; it was.

46078 Q. And the price at one destination point changes, would you assume, and if so, why, that the prices at some 200 others would change with it?

A. I see no reason, without facts, except to assume that what is happening here would be that the underlying conditions that affect one likewise will be reflected in the other cases, and there may be general influences that operate widely.

Q. Either that, or that the one is tied to the others, and that if one shifts the others have to shift.

A. Now, it is possible to turn it upside down. If they are tied altogether, but you may shift one, if necessary, alone.

Q. Well, can you see any reason for 200 destination prices to change because one changes, other than the fact that they are tied together?

A. Oh, yes. There might be a change in the freight rate structure which would change the destination prices in general.

Q. Well, I am thinking now in straight competitive theory; that is, just thinking, and asking you to think, as an economist, and see if you know of any instance where two or three hundred destination prices change because one changes, unless there is a basing point method of pricing?

A. Now, I think—

46079 Trial Examiner Norwood: Objection overruled. Answer the question.

A. As I get this now, you have changed the original question a bit, or perhaps I missed something in the original question. Now, you say that two or three hundred destination prices change because one changes?

By Mr. Paulson:

Q. Well, that is what I mean.

A. That it runs from one to the other? It is not uncommon for, say, ripples of influence to run out from one series of interlinked markets and cause changes throughout a large number of markets.

Q. Well, except by the use of the basing point method, do you know of any other instance where they change within the whole circumference of the circle surrounding a given point?

A. You are asking a factual question now.

Q. Well, I will ask you another question, Professor. Do you understand that—

A. I could give you an answer, if you wish it
46080 on a factual basis.

Q. Well, I will ask you this question. You understand that the use of the basing point method does result in the change of two or three hundred destination point prices at one time, if one destination price is changed?

A. It seems to me the answer depends entirely on the number of selling points governed by the given price.

Q. Yes; but you do understand, do you, that all the selling points governed by the given price rise or fall with the rise or fall of one basing point?

A. That is right.

Q. One destination price?

A. Yes.

Q. Now, does the fact that they all rise and fall together indicate to you that there is a lessening of competition?

A. No.

Q. Is bargaining an important element of competition, in your opinion?

A. That, like so many other things, unfortunately, depends on what you mean by "bargaining." If one means by "bargaining" higgling, say, over the price of the duck or goose or horse, or cement, if you wish, then, in modern markets, where, say, there are good means of communications, where buyers and sellers are in close communication, quite frequently you get situations where there
is no longer opportunity for a very wide area of
46081 higgling, especially when the product is standardized.

Q. I know you would like to tell us what the reason existing is today, but I am trying to find out from you whether you consider it to be an important element of competition.

A. It varies. For instance, I lived in Philadelphia a year ago. You go down on South Street, and there is bargaining going on all the time. It is the essence of business there.

Q. I am not asking you what is in existence, because the records are as available to me as they are to you, Professor; but I want to know whether you consider bargaining as an important element of competition.

A. If by "bargaining" one means the pressure of competitive forces as expressing themselves through individuals trying to get the most for their money or for their products, then I would say bargaining is an important factor in business; but if you mean a situation where you can higgle over a considerable area, you might have $3 and end with $2.

Q. Now, Professor—

Mr. Porter: I do not think the witness has finished his answer.

Trial Examiner Norwood: I think so.

By Mr. Paulson:

Q. Now, assume, Professor, that there is no bargaining over 98 percent of the sales of an industry as to the 46082 dollars and cents price, is competition in the industry unrestrained?

A. May I illustrate?

Q. Can't you answer "yes" or "no," and then illustrate?

A. If I have your question, I would say competition is not restrained because there is no bargaining, and, to illustrate, most of the department store sales in this country and mail order house sales—I suppose 99.4 percent of them, or all of them, are without bargaining, or without higgling, but no one would argue that there is not competition there.

Trial Examiner Norwood: Well, they do shop around for lower prices, do they not?

The Witness: Yes.

By Mr. Paulson:

Q. Do you know of any two department stores that have exactly the same price?

A. On individual items?

Q. Yes.

A. My wife has reported quite often—

Q. Is it generally true that you find two department stores, across the street from each other, that have the same prices for even the same articles?

A. Yes, quite a few articles. There are some differences, particularly if the products are not standardized. The prices may be different on standardized products, in order to use them as a leader.

46083 Q. Yes; but I would like to know whether or not you consider competition is lessened where all bargaining over price is eliminated, in a commodity such as cement?

A. No, I do not think bargaining is possible over very wide limits.

Q. You do not think so? Would you be surprised to know that there was some bargaining over the price of cement?

A. No, but I would be surprised if it were a general phenomenon in the industry.

Q. Well, where there is bargaining over price in cement, is that a monopoly?

A. Where there is bargaining is that a monopoly?

Q. Yes.

A. I do not see any necessary inference there.

Q. Is it competition where they bargain over price?

A. One assumes that there is competition where there is some bargaining, but you might have a monopolist bargaining, if he wishes to take the trouble; but it might be a waste of time, since he is a monopolist.

Q. Is it a symptom of monopoly or a sympton of competitive condition where there is bargaining over the price of cement?

A. Over the price of cement?

Q. Yes.

A. May I have that question again?

Trial Examiner Norwood: Read it.

46084 The Witness: I lost it.

(Question read.)

A. In general, I would think certainly it is a symptom of competition, but I might add that you could build an abstract case for monopoly bargaining.

By Mr. Paulson:

Q. Well, you have said that you consider bargaining as an important element of competition. That is correct, is it not?

A. No, not at all.

Q. Bargaining is not an important element of competition?

A. No; I did not say that, but it is—

Q. Is it an important element of competition?

A. I tried to indicate that it depends upon what you mean by "bargaining." If by "bargaining" you mean

higgling, then in a large proportion of American business there is not a very wide area of higgling, but if by "bargaining"—

Trial Examiner Norwood: Well, by the use of the word "higgling," there is an expression of competition, is there not?

The Witness: Not necessarily. That is why I say you can build an abstract case. A monopolist could make more income for himself if he could vary the price.

46085 Q. In the naming of price, do you find it an important avenue of competition, the naming of a dollar and cents price?

A. As I recall, we had that question this morning also, and I was confused by the words "avenue of competition."

Q. What do you like to call the various components of the institution of competition?

A. The various components of the institution of competition? I do not know whether you appreciate it, but that is a lot worse than it sounds, because that, to me, means the whole economic structure. All of its components—that is a very broad thing.

Q. I think you were at least willing to say a while ago that rivalry meant something to you in connection with the term "competition"?

A. Yes.

Q. Rivalry does.

A. Yes; that is right.

Q. But does the naming of price mean anything to you in connection with competition?

A. Yes; yes.

Q. Is it an important element of competition?

A. Whether a price is named by a seller or whether he takes the price named by the market, depends upon conditions. Farmers normally cannot name a price,

46086 because they are in a condition where the market determines their price, and they cannot influence the price result, except perhaps in the local market. A farmer with a certain grade of wheat may sell it for seed wheat, and he can name the price; but that is only a few cents. Manufacturers can name the price on which they will do business, and in doing that they have to look over the market and decide what price will be effective. Sometimes in economic literature, perhaps improperly, that is called administered price policy.

Q. And in the naming of price, after they have surveyed the field, you find an example of competitive action?

A. Yes.

Q. If it is done independently.

A. Why, yes. Henry Ford is competing; is he not, when he names a price on his cars. Now, he may—

Q. Suppose Henry Ford, General Motors, and Chrysler decided tomorrow to not independently name prices for their cars, but to get together around the table and name the price for their cas. Has competition been affected in any way?

A. Yes, I should think so, but—

Q. Injured or restrained?

A. I should say, if they get together and agree among themselves to fix the price, competition has been restrained.

Q. Has it been seriously restrained?

46087 A. Whether it has been seriously restrained would depend upon the price they fixed in relation to what it would have been without the restraint.

Q. Competition between them as to naming of price has been eliminated, hasn't it?

A. For the moment.

Q. And does the public derive a large proportion of the benefits that it is entitled to under competition through the independent naming of prices generally?

A. "Yes" and "no." It is quite possible—

Q. In an industry like the cement industry, would you expect the public to receive a large proportion of the benefits to which it is entitled under competition from the naming—the independent naming of prices?

A. I should think you would probably get a larger proportional benefit from that than through collusion, but the converse is possible.

Q. That does not answer the question, Professor.

The Witness: From the standpoint of what, please?

46088 Q. From the standpoint of the benefits that the public is entitled to under competitive action.

A. That becomes a matter of personal judgment, about which I am willing—concerning which I am willing to take a position. The results one could get by arbitrary governmental or other price fixing; by contrast with its social cost and social hazards, compared with the results you get with competitive pricing, that is under conditions of imperfect competition—

Q. Now, leave out the Government and just suppose 75 cement manufacturers are in the picture, and that they independently price their product from 1930 to 1933, and then in 1933 they collusively priced their product, and eliminate all independent action in the naming of cement prices, has an important element of competition been taken away from the public?

A. I should say "Yes."

Q. I do not know now where your stand, Professor, on the question whether bargaining is an essential of competition.

A. My answer was very clear. I will be willing to repeat it.

Q. Yes, shortly, if you will, please.

A. I think bargaining in the sense of the focussing of supply and demand forces, but not in the sense of higgling, is essential to competition, but that—

Q. Let us bring it down to earth more.

Mr. Leisure: Let him finish. Let him finish.

46089 A. But that in much of your American industry it is no longer feasible or desirable to have a lot of higgling over a range of prices at any given moment.

By Mr. Paulson:

Q. Yes, let us bring it down to the cement situation, and assume that when contractors buy cement they approach a number of cement dealers and there is a great deal of higgling, as you put it, until finally the contractor buys from one of these cement manufacturers, isn't that sort of higgling what you would say is undesirable?

A. Not at all, but—

Q. Is that—

A. May I continue?

Q. Yes.

A. But I should think under conditions of the cement industry that they would not get very far with that higgling because the product is standardized, and everybody knows the price, and that the game could not be played very effectively.

46090 Q. What makes you think that cement could not be sold at more than one price at a given destination point?

A. If the buyers and sellers on both sides of the market are in competition and are informed it is not reasonable

to assume that you can have for long a public variation between them.

Q. Have you ever driven up to a filling station on one side of the street where gas was selling at 2 cents less, 2 cents off, and across the street there was a station which has 3 cents off, and you bought from the one at 2 cents off?

A. I do it regularly, if one of them gives me 2 cents off.

Q. I say, if you go over across the street you could get it for 3 cents off, do you go across the street invariably, or sometimes buy from the station at 2 cents off?

A. I do not think I have been able to find a 3-cent off man. If I can, I will patronize him.

Q. Have you ever seen two stations, one on one side of the street with 2 cents off and another on the other side of the street with 3 cents off?

46091 A. I do not recall those figures. I have seen gasoline figures—

Q. Haven't you in your studies run across situations where filling stations were selling standard gasoline, which sold on one corner at 12 cents, and another, right across the street, for 14 cents, and seen that exist for 6 months?

A. I will be glad to talk about that.

Q. Just answer "yes" or "no." Have you ever seen that in your studies?

A. For brief periods.

Q. Six months, I have said?

A. Wait. I cannot answer it briefly. May I have time to answer his question?

Trial Examiner Norwood: Answer it any way you want.

A. There are various grades of gasoline in the market, at least in California, it has been the trade practice through a number of years of experience to put out a second grade at a cent and a half or two cents below the regular grade, and for the Ethyl to be, say, two cents above the regular grade. Now, you will find some dealers selling at, say,—third grade gasoline at—

Trial Examiner Norwood: I think we are getting off the hypotheses here.

46093 "Q. Assume that cement manufacturers have a desire to quote identical prices, delivered prices, identical delivered prices, that they sell at delivered prices exclusively, and to make it possible to quote identical prices it is necessary that they each use the same freight rate in making quotations; would it promote or restrain competi-

tion to implement them with the identical rates, freight rates?")

46094 A. All right. You have in the first place the assumption that manufacturers desire for some reason—

By Mr. Paulson:

Q. Well, please, "yes" to this—just answer the question "yes" or "no."

Trial Examiner Norwood: I think you might give a direct answer to that.

A. All right. I will try, Your Honor.

It, in my judgment, would promote the competition of any individual firm if it had this information. In other words, if it were implemented in its pursuit of volume by this information. If all of them, say, have this information and have an adequate body of such information I think it quite possible that the price results might be more precise, or I will put it stronger, would be more precise at the various points.

Now, whether the price result implemented by this information is more or less restrained it seems to me depends upon the fundamental conditions of the industry. In other words, the important thing here is not in my judgment a minor method of implementation; the important thing is fundamental conditions of the industry.

Trial Examiner Norwood: Well, what effect would it have on uniformity of price?

The Witness: If all had full freight knowledge there would be a greater tendency towards uniformity of
46095 price than if they had to operate without that knowledge, I should think.

Q. Professor Grether, do you subscribe to the belief that the simple forthright prohibitions of the Sherman Act are too unsophisticated?

46097 The Witness: Am I allowed to see the context of that statement, or not?

By Mr. Paulson:

Q. No, that is my question. Answer it, please.

A. Am I allowed to make rather frank comments about this?

Trial Examiner Norwood: Why, I think so. I wish you would make a direct answer, if you can; answer that as to whether you subscribe to that or not alone. You may say

you do or you may say you do not, or you may say you are unable to express an opinion on it, and then you may give your reasons therefor.

A. It sounds very much to me as it might be a paraphrase of or perhaps a direct lifting of a portion of something I have written.

Trial Examiner Norwood: Yes.

A. And my feeling, my opinion when I wrote that,—and I think I may say it is still my opinion,—is that the kind of economic thinking that was done at the time the Sherman Act was written was too unsophisticated, that the sort of thing that has been running all through my answers is highly important, that one makes qualitative distinctions rather than have sweeping prohibitions.

Trial Examiner Norwood: Well, in that sense you do?

The Witness: Support that statement, yes.

46098 By Mr. Paulson:

Q. And do you subscribe to the belief that actually monopoly and competition are inexplicably interwoven into an infinite variety of patterns—that is, that competition inherently is somewhat imperfect?

A. Yes.

Q. And did you write that statement?

A. I cannot vouch for it word for word, but it sounds pretty much as if it came off the end of my pencil.

Q. I show you a book which shows on its face that it is written by you. I will show you a book which carries a collection of articles, and ask you if you will look at this and refresh your memory and say whether or not you have written—

A. Which part—

Q. —those two statements that I put in the form of

46099 questions?

A. Have you marked those lines?

Q. Right beginning with the word "This."

A. Am I to read this out loud or to myself?

Q. Yes, and tell me whether or not you wrote it.

46100 A. Yes, it seems to me entirely—

Q. You wrote what? What did you write on that point?

A. I wrote that part, all the rest of this article entitled "Market Legislation."

46101 Q. Did you write this statement, Professor Grether?

A. Yes.

Q. "This tendency without doubt reflects the growing awareness (1) that the simple forthright prohibitions of the Sherman Act were too unsophisticated (witness the 'rule of reason') and (2) that actually monopoly and competition are inextricably interwoven into an infinite variety of patterns; that is that competition inherently is somewhat 'imperfect.'"

Q. Did you write that?

A. Yes.

Q. Have you on any occasion written the following statement: "Under the recent and current stress in economic theorizing which is becoming tremendously
46102 revelatory 'monopolistic competition' is set up as the characteristic form for most competitive situations by contrast with 'pure' competition which is for the most part an abstract formulation useful primarily as a basis of comparison in the evaluation of the former. Under 'pure' competition it is assumed that no individual buyer and seller can exercise an appreciable influence over price. 'Monopolistic' competition, on the other hand, represents a variable intermingling of the typical characteristics of 'pure' competition and of its logical abstract antithesis, pure monopoly; as a hybrid it partakes of both but is neither.

"The realistic descriptive values of monopolistic competition would require the portrayal of myriads of individual situations in which identical or different elements are compounded in an infinite variety of amalgams."

Did you write that?

A. Yes.

46103 Q. What is the title of the article under which
46104 that quotation—

A. It is the book "Price Control Under Fair Trade Legislation."

Q. Contrast briefly monopolistic competition and imperfect competition.

A. In the past 15 years or so when economists were trying to find words to describe these newer stresses, I think a large number of people have been trying to pull words out of the air. Now, before you had the words—this phraseology—"monopolistic competition" set up, I used to speak of quasi-monopoly, for instance, and I did not like the words. Now, the term "monopolistic competition" became crystallized by Professor E. H. Chamberlin of Har-

vard in a book under that title. At the same time, almost identically, with only a few months variation, across the water in England, a Mrs. Joan Robinson wrote a book called "The Economics of Imperfect Competition." Now, Professor Chamberlin—

Q. Will you fix the date on that, please?

A. It is either 1935 or a year or two earlier, but it is within a year or two of that, but it was, I am sure, not later than 1935; I am sure about it. And before both of those books were written there was a lot of controversy in the journals which is still going on. Now, all the economists realize, I think, that those are bad words from the standpoint of conveying our meaning, but we have not been able to find any better ones.

46105 Now, Chamberlin, I understand, did not use "imperfect competition," because he thought it suggested something bad, you see, so he finally settled down to these words "monopolistic competition." For a brief period I think he was in a mood to argue that perhaps he had something different from what we could find in any other word. As far as I know now, Chamberlin and most everyone else is settling down into the groove of using "imperfect competition" as the word to describe the phenomenon for this series of problems here.

Now, I do not wish to imply from this that the treatment under this caption is the same. It is basically the same in mechanics, its geometric pattern and so on, but Professor Chamberlin in his volume addressed himself to certain expressions of imperfect competition, that Mrs. Robinson did not address herself to. He discussed product differentiation, product variation and sales expenditures. Mrs. Robinson's analysis was more largely directed at the relations that these factors reflect.

I might add also that the phraseology "monopolistic competition" is somewhat unfortunate, not for economics but for the fact that you get into situations of this sort here, where you have a legal issue and where the term "monopoly" has a different meaning. The term "monopoly" to an economist does not necessarily connote something that is opprobrious. I think you will find

46106 that statement made in here that "monopolistic competition" is not necessarily opprobrious.

Q. Was Chamberlin's position that the term "imperfect competition" tended to confuse the issue?

A. Chamberlin's position with respect to what?

Q. To the term "imperfect competition," was his objection to that that it tended to confuse the issue?

A. One never knows, it may have been unfortunate that two people at just about the same time began organizing this controversial literature and used different phrasing to describe it, at the same time.

Q. Well, do you know what Chamberlin said on the subject?

A. From what standpoint?

Q. As to why he did not like the term "imperfect competition"?

A. He wrote an article on that. I have forgotten what he said in the article, but he did discuss that at one time in an article.

46107 Q. Well, did he consider that imperfect competition, the use of that term, is to confuse the answers?

A. I have forgotten his exact wording; as I recall, he, for some reason—I think because he felt the word "imperfect" had certain connotations, thought that "monopolistic competition" was preferable terminology.

Q. I will show you a book—showing you page 7 of the introduction.

A. Yes.

Q. And ask you to read that and see if that is the gist of what your understanding of Chamberlin's position is, and if that is not where you got your understanding.

46114 Mr. Leisure: I object to Counsel reading from a book which is not in evidence in this case.

46115 By Mr. Paulson:

Q. "Pure and perfect"—

Trial Examiner Norwood: Wait a minute.

Mr. Paulson: I am asking him if he does not know that Chamberlin took this position. He has tried to tell us what position Chamberlin took, so I certainly am entitled to find out if he does not know that this is the position.

Trial Examiner Norwood: Go ahead. Ask him.

By Mr. Paulson:

Q. (Reading.) "Pure and perfect competition must not be identified; and to consider the theory of monopolis-

tic competition vaguely as a theory of imperfect competition is to confuse the issues."

Now, I show you again the book.

A. I have seen it.

Trial Examiner Norwood: Did Chamberlin write that or not?

The Witness: Yes—I cannot vouch for who wrote it. Chamberlin's name is on the book. I assume he wrote it.

Trial Examiner Norwood: But do you recall that doctrine having been initiated by him?

The Witness: Well, it is here, yes, and I have used this as textbook is used in my classes, so—.

46117 The Witness: Is the witness allowed to speak without a question from someone?

Trial Examiner Norwood: I will ask you a question: To make any explanation of this matter that has just been received here that you wish.

The Witness: All right. I did not state that this was the source of this term. The term "imperfect competition" was used prior to this period. In fact, it was used in 1932 by the Federal Trade Commission in "Price Bases Inquiry" report, and earlier.

By Mr. Paulson:

46118 Q. Is that the first you ever heard of the term?

A. I do not recall when I first heard of the term It has been in economic literature.

Q. Professor, do you have free competition when sellers exercise self-restraint?

A. May I have the wording of that question?

Trial Examiner Norwood: Read it.

(Question read.)

A. Yes.

Q. Are you the author of this statement: "Hence the courts and legislators in connection with the regu-

46119 lation of trade practices gain little or no assistance from an examination of the deductive principles of formal economic theory derived from the assumptions of pure competition. But does it follow that every problem is a special case and that no general economic principles are applicable?"

46120 The Witness: Now, the quotation reads: "Hence, the courts and legislators in connection with the regulation of trade practices gain little or no assistance from an examination of the deductive principles of for-

mal economic theory derived from the assumptions of pure competition."

That is exactly what I have been saying here the whole time.

46121 Trial Examiner Norwood: Yes. So you did write that?

The Witness: Yes. I hold that position.

By Mr. Paulson:

Q. Are you the author of this statement, Professor: "The misfortune of economics and law"—page 376—"The misfortune of economics and law from the standpoint of their union in the development of standards of evaluation is that the 'free and open competition' posited by the latter is the 'monopolistic' competition of the former."

46123 A. Yes. Flatly and bluntly there is no inconsistency between this statement and what I have been doing here.

Q. That is, you now take—

A. May I finish?

Trial Examiner Norwood: Let him finish.

A. All I am saying here is that it is unfortunate that economists and lawyers use the same words to mean different things, and that is unfortunate, that we find it difficult to meet around a table because we have this 46124 different background or connotation attached to the use of the same words.

Trial Examiner Norwood: Go ahead.

A. That is, when the lawyer speaks of free and open competition, that kind of competition typically contains within it elements of monopolistic or imperfect competition; that is all I mean by that.

By Mr. Paulson:

Q. Did you know you were going to be connected with this case when you wrote that statement?

A. No.

Q. When did you become connected with this case?

A. A year ago last summer I was teaching at Columbia, and there was forwarded to me a letter from California from Mr. Bond, asking whether I would be interested to look into some material of the case from the standpoint of my judgment on the matter. Since I was in New York I went down to see Mr. Bond, and

following that I had considerable correspondence with him, and finally some personal conferences, but I have difficulty in putting a date on when I knew I was going to be connected with this case.

Q. Professor, in answering questions on direct and cross, you eliminated all alternative methods to that put to you in the hypothetical question on the ground that it would all come back to the present method under free competition. Now, would you also say no modifications were possible in the present method?

46125 A. I have at various times discussed alternative methods, and I do not recall stating in the fashions indicated here that in all conditions it would come back to merely the present method. Did you have a statement there about free competition?

Q. Yes.

A. Well, in that case I did, if you have free competition, I missed that, that phrase, but I did discuss alternative methods, what I mean to say.

Q. I gave you the assumption, the conditions of free competition, and you have said that it would resolve back to the present form of marketing.

46126 A. Assuming the conditions given me?

Q. Yes.

A. For the purpose of my analysis?

Q. Yes. Would you also say that no modifications were possible in the present method?

A. Well, I think I discussed that at some length, that there might be modifications, if other variables are introduced, but as to whether or not, with the given conditions, there might be minor variations, that is a rather difficult question to answer.

Q. Assume that there is no service competition, no commodity competition, and no other dollars and cents, competition than has been described to you in the long hypothetical question put to you, are the members of the industry in competition?

A. May I ask you what you mean by "commodity competition"?

Q. Don't you use that term?

A. I speak of "product variation" as a competitive adaptation—not commodity.

Q. All right. None of that type of competition, then.

A. Not assumed.

Q. No service competition, no other dollars and cents computation that has been described to you by the long hypothetical question. Are the members of the industry in competition?

A. Yes.

Q. In what respect?

A. In these three respects: They are competing
46127 to maintain the quality of their product, or to improve it; they are competing from a price standpoint; likewise, they are competing from a service standpoint.

Q. Well, assume no service competition.

A. I thought you said no additional to what is in the question. Those are already in the assumption.

Q. No, I asked you to assume no service competition, no commodity competition, no other dollars and cents competition than has been described to you in the hypothetical question.

A. But all those things are in the question.

Q. I am assuming that they are out of the question. Now, is there competition.

A. What was the wording? I thought you said—

Trial Examiner Norwood: In other words, are there any other kinds of competition than the ones enumerated?

The Witness: Is that what you mean, may I ask—are there other elements of competition?

By Mr. Paulson:

Q. I said is there any competition between the members, under this assumed set of facts.

A. Assuming that there is no commodity, no price—

A. Yes.

A. No price competition.

Q. No; I did not assume price competition. I said no other price competition than is described in the long
46128 hypothetical question—no service competition.

A. That is, you mean there is no service competition?

Q. Yes.

A. Yes; there is still competition.

Q. In what respect?

A. They are still standing there ready to take business at a price competitively.

Q. And your definition of imperfect competition allows

you to include in it a situation where there is no other competition between members of an industry than that they stand ready to take business; is that correct?

A. That is right.

Mr. Paulson: I see.

Off the record.

By Mr. Paulson:

Q. Do you consider that an industry is competitive where all the members concertedly quote prices? I want to get your direct answer to that.

A. May I ask again, as in the past, what you mean by "concertedly quote prices"?

Q. Well, Professor (Laughter)—I will withdraw the question, Professor, if you have not learned my meaning of "concertedly" by now.

A. I am sure I have not.

Trial Examiner Norwood: Well, to quote the 46129 prices according to the pattern that we have been discussing.

The Witness: You see, to me, that does not suggest concertedly.

By Mr. Paulson:

Q. Will you give me all the tests or indices that you have in mind for determining the existence of collusion in an industry?

A. In the first place, I think I have indicated this already, that the term "collusion" is not an economic term; it is not part of our vocabulary, technically. It is part of the legal vocabulary, technically, and I have also stated that by collusion I mean agreement among competitors to do an illegal thing.

Q. Just give me the tests that you apply in defining that.

A. You could have two types of tests, only one of which might be definitive. One would be the behavior resulting, but—

Q. What type of behavior?

Mr. Leisure: Wait a minute. Let him finish his answer.

A. If the pattern of behavior looks as if it might be coming from collusion.

Q. Well, what would look like it might be coming from collusion?

A. Any number of things.

Mr. Leisure: Wait a minute.

Trial Examiner Norwood: Let him answer the
46130 question. Go ahead.

A. If the pattern of behavior looks like it might be coming from collusion, that might raise some questions. Beyond that, you have the issue of fact, and that is a matter of getting evidence, and it seems to me that is the job of law enforcement, to get the evidence as to whether there was collusion.

By Mr. Paulson:

Q. You have not tests, then, for determining collusion?

Mr. Leisure: Just a minute.

If Your Honor please—

Trial Examiner Norwood: Finish your question.

Mr. Leisure: I beg your pardon. I did not mean to interrupt you.

Mr. Paulson: I have finished.

Mr. Leisure: I am not raising any objection to this, I did not raise any objection to it when we had the same questions this morning, but I do point out to the Examiner that we have had these precise questions this morning.

Mr. Paulson: No; not quite.

Trial Examiner Norwood: The objection is overruled. Answer the question.

A. From the standpoint of economic analysis—and please note I am stating that this is not an economic problem, but this, technically, is outside the field of economics—
one would look at the results. Now, if those results
46131 can be explained in other ways there is no necessary inference of collusion. Now, if they could be explained, either by collusion or in other ways, or by collusion alone, then it becomes a matter of fact, and, not speaking expertly at all, it seems to me that if there were a general collusion in industry it would leave enough footprints all over the landscape to allow one to get the facts.

By Mr. Paulson:

Q. What footprints would it leave; what would you look for?

Mr. Leisure: I object to that.

Trial Examiner Norwood: Objection overruled.

What would you look for? What will be the symptoms?

By Mr. Paulson:

Q. Identical prices?

A. That might or might not be an explanation of it.

Q. Uniformity in dollar prices?

A. No. I feel sure—

Q. Would that be one that you would look for?

A. It might or might not be.

Q. Elimination of trucking in industry, where trucking would be an economical method of transportation?

A. It might or it might not be.

Q. Elimination of diversions, where diversions would result in getting the cement to the buyer at a lower cost than otherwise. Would that be one?

Mr. Leisure: One moment, please. We went all
46132 over these questions this morning. I object to this on that ground. The record will show every one of them.

Trial Examiner Norwood: He may answer again.

The Witness: What was the last thing you asked?

Trial Examiner Norwood: Read it.

Mr. Paulson: Read it, please.

(Question read.)

A. Not necessarily.

By Mr. Paulson:

Q. It might or it might not be; is that right?

A. I think there is a stronger assumption that it would not be.

Q. But it might or might not be?

A. Well, under certain conditions.

Q. A refusal to sell f.o.b. mill when the personal welfare, the immediate prospects for gain, were great to sell f.o.b. mill. That would be an indicia?

A. The things postulated in the long hypothetical question?

Q. Well, we are talking about these footprints that you would look for.

A. Oh, that is a different thing. I hope I indicated clearly that from an economic standpoint you have no answer, unless it is clear cut, and that there is no other answer, you see. That is not an economic problem.

Q. But you said there were some footprints that
46133 you would look for, and I want to know what they are.

A. Well, those are legal footprints. I have in mind particularly that there should be evidence in the files of the company, evidence of meetings held.

Q. There is no way that an economist can determine whether there is collusion or not by looking at the facts or circumstances?

A. If there is no other reasonable explanation, then I think he might very well reach that conclusion, but if it is a matter of fact, as has often been established, then he may except that conclusion.

Trial Examiner Norwood: And not otherwise?

The Witness: Yes.

By Mr. Paulson:

Q. What symptoms would you expect to find when the industry is operating collusively?

Mr. Leisure: I object to that.

By Mr. Paulson:

Q. Economic symptoms?

Mr. Leisure: We went over that this morning. The record will show that we did.

Trial Examiner Norwood: Objection overruled.

By Mr. Paulson:

Q. We have already gotten over the identical prices, and so forth. Now, what others—rigidity of price?

46134 A. Perhaps. For instance, take the matter of rigidity. Rigidity, in itself, is not definitive as an answer, because the monopoly group in collusion might vary prices, you see.

Q. Is it another indicia of collusive action that where a mill gives up its own home territory to sales of competitors and goes abroad and makes sales in the territory of its neighboring competitors?

A. Not necessarily. It perhaps has no control over the entrance of outsiders into its territory. If they come in, it looks elsewhere for volume.

Q. It might or it might not be.

A. I think there is a strong presumption that it would not be.

Q. You think it is normal for them to sacrifice their own local market to outsiders and go beyond and try it pick up enough business to keep coming; is that right?

A. If they have no control of the situation.

Q. You think that is the normal, rational thing to do?

A. If they have no control over the situation, but if they have effective control they would probably try to exercise it.

Q. Well, I do not know what you mean by "control" there.

A. Well, if you had power through some marketing method or some price method, you could use to meet the competition and make more money selling in that market, and not go outside, it might be reasonable to do so, except that, if the demand is fluctuating, you might very well prefer to have connections outside to protect
46135 yourself.

Q. Is it rational conduct, in your opinion, for a man to sell all of his cement 50 miles away from his cement mill, when there is a market for every barrel within 50 miles of his cement mill.

A. If he has no way of excluding competition, without being worse off, I should think it is rational.

Q. Is it rational for a cement seller to be accepting varying amounts of money for the product which he is selling, from different buyers at the same time?

A. Yes.

Q. That is right?

A. Yes.

Q. And is it rational to accept widely different amounts for sales of the same quantity of the same quality at the same time?

A. From whom?

Q. From varying buyers.

A. Yes.

Q. And to sit quietly by while his competitors come in and invade his territory and make it necessary for him to complete his volume of business by inviting theirs; is that ration, in your opinion?

A. I assume he is not sitting quietly by; I assume he is trying to get out and get some business, too.

Q. Well, he would be getting business at reduced
46136 prices at home, would he not?

A. Not if it arouses retaliation. He is worse off than ever.

Q. It is a perfectly rational competitive conduct?

A. Yes.

Q. For him to sit idly by.

A. Not idly by. He is looking out for business.

*Redirect Examination by Mr. Leisure.*

Q. Professor Grether, I believe you had not quite finished your analysis of the long hypothetical question. Will you just continue with that, please?

A. All right.

Mr. Paulson: I do not think this is proper redirect. He cannot go over the part that I have gone over. If I choose to ask him to analyze a question and then withdraw the question I think there is no necessity for that.

Mr. Leisure: That is right, Mr. Paulson; you can stop anything you want to just because you do not like the answers you are getting, but that does not mean that on redirect I cannot go over it, if I happen to like the
46137 Mr. Paulson: That would be cross-examination and not redirect.

Trial Examiner Norwood: Yes; I think so.

Mr. Leisure: I submit I have a right to ask—

Trial Examiner Norwood: Do you want to conduct cross-examination?

Mr. Leisure: To complete the analysis.

Trial Examiner Norwood: Objection sustained.

Q. Well, you referred to certain statements and I would like to ask you now whether or not you had completed your answer as far as the record goes.

46138 Trial Examiner Norwood: Well, I do not think that that—

Mr. MacIntyre: As to those elements.

Trial Examiner Norwood: We do not need any further explanation of the answer that he gave on cross-examination.

Mr. Porter: Mr. Paulson asked him to enumerate certain points in this question which were inconsistent with collusion.

Trial Examiner Norwood: Yes.

Mr. Porter: Mr. Paulson said he was going to get him to give a list of them. The witness started with one or two and then Mr. Paulson did not like the answers, and he said "I will interrupt and then later you may go ahead
46139 with them;" but he never let him go ahead with them.

I think, in fairness, the witness, if there are a number of points in regard to which he thinks the question is inconsistent with collusion he has a right to tell us, either on direct or on cross or on redirect.

Q. As I understand it, there are other points which you are prepared to discuss, are there not?

A. Yes.

46140 Mr. Leisure: As I understand Your Honor, you feel that we ought not to go into that?

Trial Examiner Norwood: You ought not to go into that. That is right.

Q. Professor Grether, Mr. Paulson asked you about basing points, and you asked him, "Do you mean single or multiple basing points?" And Mr. Paulson did not answer you. What is the difference between a single-basing-point method and a multiple basing-point method?

A. In the case of a single basing-point method, the prices are figured from one base rather than from a number of bases.

Q. You were not discussing that?

A. No. That is right.

Q. In your cross or in your direct examination, as I understand you.

A. No.

Q. Now, you said that, in reading from one of your books, Mr. Paulson omitted one sentence without indicating, by asterisks or otherwise, that anything was omitted. What is the sentence? Have you got that book here? What is the sentence that was omitted?

A. That was not a book. That was that article in the "Annals of the American Academy."

Q. Yes. I want you to supply the sentence that was omitted.

46141 A. I am rather inclined to think that on the second reading it got in; that is, after I read it. I am not certain, but I will check it through.

Q. All right.

A. Do you have that page there?

Mr. Wooden: Which one are you talking about?

Mr. Paulson: Page 168, I think.

A. Oh, here it is, yes. The portion omitted was: "(Witness the 'rule of reason.')"

By Mr. Leisure:

Q. What is that, please, so that we will have it for the record. Tell us what that follows?

A. That follows the word "unsophisticated."

Q. Did you give the page?

A. Page 168.

Q. When you said that when producers stood ready to take business, in the argument that you were having with Mr. Paulson, they were competing, what did you mean by that expression?

A. I meant that they were ready and willing, and also aggressively soliciting business. In other words, they were not merely passive.

46142. E. B. USSERY was thereupon called as a witness for the Respondents, and, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Withrow.*

Q. Will you please state your name and address, Mr. Ussery?

A. E. B. Ussery, Investment Building, Washington, D. C.

Trial Examiner Norwood (Addressing the witness): You testify to the truth of this statement here?

The Witness: I do; yes, sir.

Trial Examiner Norwood: The statement is as follows:

46143. Qualification of E. B. Ussery:

I have been in traffic and transportation work since 1920. From 1920 to 1923 I was associated with the Atlanta-Birmingham & Coast Railroad at Atlanta, Ga., in the capacity of tariff clerk, traveling tariff inspector and quotation clerk. From 1923 to 1927 I was an executive rate clerk associated with the Fourth Section Committee of the Southern Freight Association of Atlanta, Ga. This Committee prepared and presented all rate data in the Southern Class Rate Investigation, known as I. C. C. Docket No. 13494. The Committee also handled the rate revisions on various commodities from, to, and between points in the South to conform to the requirements of the Fourth Section of the Interstate Commerce Act.

From 1927 to 1932 I was assistant to Mr. Charles E. Bell, nationally known traffic analyst of Washington, D. C., and aided him in preparation of cases which his organization handled before the Interstate Commerce Commission and various State commissions.

From June, 1932, to November 1, 1936, I was engaged in private practice preparing and presenting cases before the

Interstate Commerce Commission and State Commissions. During this period I was traffic rate consultant to the National Bituminous Coal Commission for the express purpose of preparing and presenting evidence in I. C. C. Ex Parte 115 relating to the rates on bituminous coal.

46144 From November 1, 1936, to the present time Mr. Bell and myself have been associated together in the business of transportation and traffic specialists.

It is needless to say that during the past 20 years that the price function of transportation and traffic work is ascertaining the applicable rates on the commodities under consideration and an analysis of such rates after they have been ascertained. This, of course, requires knowledge of tariff construction and the ability to correctly interpret the tariffs legally on file with the Interstate Commerce Commission or State commissions.

Mr. Withrow: Your Honor, I tender this witness as an expert freight traffic man in the interpretation of railroad tariffs.

46145 Washington, D. C.,
Friday, October 11, 1940.

46148 E. B. USSERY thereupon resumed the stand and testified further as follows:

*Direct Examination by Mr. Withrow (Continued).*

Q. Mr. Ussery, I show you Respondents' Exhibits 3475-A to K, and 3480-A to K, and ask you if they were prepared under your supervision?

A. They were; yes, sir.

Q. And do you vouch for their accuracy?

A. I do, sir.

Q. And would you tell me one thing, are these the lowest rates on this statement in effect?

A. Yes, sir; they are, for the period of time as indicated on the exhibits.

Q. Will you tell me what, generally, the source of the rate is,—are the tariffs on file with the I. C. C.?

A. Yes, the information was taken from tariffs on file with the Interstate Commerce Commission.

Mr. Withrow: Your Honor, I offer in evidence at this

time Respondents' Exhibits 3475 and 3480, for identification, just given, and at the same time I offer the remaining documents, 3468, 3469, 3470, 3471, 3472, 3473, 3474, 3476, 3477, 3478, and 3479, which are tariffs or portions of
46149 tariffs certified by the Secretary of the Interstate Commerce Commission.

In all cases I am offering the entire exhibit with the appropriate sub-letters (handing documents to Counsel for the Commission).

Q. Would you tell us, Mr. Ussery, briefly what these exhibits, to which we have just referred, which you identified as Respondents' Exhibit 3475-A to K, and Respondents' Exhibit 3480-A to K, purport to be, without going into their contents?

A. Yes, sir.

Well, Exhibit 3475-A to K purports to be a statement of rates on Portland cement, carload, from Crestmore, Calif., and El Paso, Texas, to all carloading stations in the State of Arizona, in effect on July 1, 1937. The rates contained on the statement are stated in cents per 100 pounds. The carloading stations in Arizona were determined by
46150 use of Leland's open and prepay station list, which governs all tariffs on file with the Interstate Commerce Commission. The station list number is shown on the lefthand side of the page. You will also note in the second column the name of the particular station. In those instances where there is a reference that means that the station, as explained on the last page of the exhibit, is an open station. In other words, freight can be transported to that station either prepay or collect. In all other cases where there is no reference on the station, as indicated, it means that the freight must be prepaid to that particular station. In the next column you will note that we have tariff authorities. In the next column is the identification as to how the particular rate was ascertained, giving the page number and the different items. The next column gives the information as to what type of rate it is. For instance, the column of rates specify commodity rate or otherwise.

Now, let us, for the purpose of illustration, take station No. 17456, Powell, Ariz. The rate of 50 cents from Crestmore, Calif., was ascertained by using the Yucca rate under the intermediate rule which is shown on page 22 of P. F. T. B. I. C. C. No. 1250, and the rate to Yucca will be found on page 55 of that tariff.

The same explanation applies in connection with rates from El Paso, Texas.

46151 Respondents' Exhibit No. 3480 is a statement of rates on Portland cement, carload, from Crestmore, Calif., and El Paso, Texas, to all carloading stations in Arizona as of January 1, 1939. It was compiled in the same manner, and the information is shown similar to that as described in Respondents' Exhibit No. 3475-A to K.

Q. In all instances you have shown the tariff authorities for the rate shown?

A. Yes, sir; that is correct.

Mr. Wooden: Would the same explanation or illustration apply to the others?

Mr. Withrow: I believe he so testified.

Is that correct?

The Witness: That is correct.

I might add that for the other particular type of rate you might refer to Exhibit No. 3475, on page A, station No. 17445, and you will notice in the column "Specific Commodity Rate or Otherwise," you will find the word "Specific," which means that the rate was published to that station.

46157 DONALD J. LYNN, called as a witness on behalf of the Respondents, being first duly sworn, testified as follows:

*Direct Examination by Mr. Brick.*

46158 I have been associated with the Bessemer Limestone & Cement Company. That corporation was organized under the laws of the State of Ohio. I was associated with the company as a director and as treasurer and secretary. I was elected a director on January 29, 1927, and the same day at a directors' meeting was elected secretary and treasurer and I served until my resignation was accepted on December 4, 1934. During the time that I was secretary and treasurer of the company I was acquainted with its affairs and with the status of the company.

While I was secretary and treasurer of the Bessemer Company, the company made a distribution of its assets. There was a distribution in kind made by the corporation

under date of February; the actual distribution by deed and bill of sale took place February 3, 1927, but the corporate action was taken on January 29, 1927.

46159 To explain the nature of that distribution, at the annual meeting of the shareholders on January 29, 1927, the shareholders approved first of all the redemption of its outstanding preferred stock and the purchase, also, of whatever stock might be offered in the interim at 110, as I remember, and also authorized the complete liquidation of the company by making a distribution in kind to its shareholders based on their proportionate holdings in the corporation. At that time all of the common stock of the corporation had been purchased by a brokerage partnership, Wick & Company. That, as I recall, is composed of five partners, and at this shareholders' meeting all of the stock with the exception of ten qualifying shares, one of which was held by myself as a director, was voted in favor of the complete liquidation of the company, and the distribution in kind of its assets, real and personal, cash in bank, accounts receivable, and everything else. The ten directors at that time, of whom I was one, who held the qualifying shares, in writing, as I recall, waived their right to proportionate distribution in the assets of their one share each, and authorized the transfer of the entire assets of the corporation to the brokerage partnership of Wick & Company, a partnership of Philip Wick, Robert Wadsworth and three other individuals. The directors on the same day took the necessary corporate action to call in the preferred stock for redemption, and also to authorize the distribution of all the assets in kind to Wick & Company.

46163 As secretary of the corporation at that time, I was proceeding to say that the corporation action so taken was that the obligation to redeem the preferred stock was assumed by the shareholders, or the shareholder in this case, Wick & Company, and pursuant to that action, both by shareholders and directors, the assets of the corporation, that is, of the Bessemer Limestone & Cement Company, the Ohio corporation, were conveyed to Wick & Company, the partnership.

The actual transfer of the assets from the Bessemer Limestone & Cement Company to Wick & Company was made by a warranty deed which was prepared by me after examination of the title of the company's properties, and

was executed by the Bessemer Limestone & Cement Company as grantor to Wick & Company as grantee;
46164 under date of February 3, 1927, and was filed for record on the same day; also, a separate bill of sale was prepared and was executed by the Bessemer Limestone & Cement Company, whereby all of the assets of the company, personal assets, including cash in bank, accounts receivable, and such like, were conveyed to Wick & Company.

46165 The witness identified Resp. Ex. 3481 as a copy of the warranty deed which was executed and delivered by the Bessemer Limestone and Cement Company, an Ohio corporation, to Philip Wick, Ernest E. Swartswelter, Philip H. Schaff, Robert Wadsworth, and James M. Chrystal, a partnership doing business under the firm name and style of Wick and Company, dated February 3, 1927, and filed for record on the same day, February 3, 1927, with the recorders of the two counties in which the real estate lay, Mahoning County, Ohio, and I think Lawrence County, Pennsylvania. He had prepared this himself.

The witness identified Resp. Ex. 3482 as the original of a bill of sale executed by the Bessemer Limestone and Cement Company and delivered to Wick and Company, whereby the Bessemer Limestone and Cement Company, an Ohio corporation, conveyed all of its personal property, including notes, accounts, and bills receivable, claims at law, cash
46166 on hand or in bank, stock, securities; patents, inventories, discoveries, trade names, trade processes, secret processes and formulae of the company, dated February 3, 1927, signed by me as secretary of the Bessemer Limestone and Cement Company.

It contains the corporate seal of the corporation. The subscriptions at the end of the document are Wick & Company by E. E. Swartswelter, a Partner in Wick & Company; I signed and Mr. Smith, who was president, signed on behalf of the company.

46171 (RESP. EXS. 3481 and 3482 were offered and received in evidence.)

The Bessemer Company did not have any assets remaining after the transfer was made to Wick & Company. I continued as a director and treasurer of the Bessemer Company until December 4, 1934, and from February 3, 1927 to December 4, 1934 the corporation did not
46172 have one single red cent. I understand (my firm was attorneys for the receiver at that time) and it is

my general information that on July 1, 1935 the Ohio corporation received assets, further assets. Between the period February 1, 1927 to July 1935 the Bessemer Company did not have any employees. Each year a federal income tax return was filed. They were returns of no property owned, and no income received, no tax payable.

46173 The Bessemer Company was not engaged in any activity at all between February 1927 and July 1935. On July 1, 1935 Bessemer Limestone & Cement Company of Delaware conveyed all of its properties to the Ohio corporation, the Bessemer Limestone & Cement Company of Ohio, of which I had been secretary and treasurer.

The witness identified Resp. Ex. 2346 as a bill of sale from the Bessemer Limestone & Cement Company, a Delaware corporation, conveying all its goods, chattels, monies, and personal property of every sort, tangible or intangible, to the Bessemer Limestone & Cement Company of Ohio, dated July 1, 1935.

The Bessemer Company, the Ohio corporation, did not have any part in the management of the Bessemer Company, a Delaware corporation. The directors were myself and men in my office, and we were solely serving as directors of the Ohio corporation during the interim, keeping the name alive

46174 Trial Examiner Norwood: Did you draw up that paper?

The Witness: No, sir; but my firm was in the 46175 reorganization proceedings — one of my partners handled the preparation of that particular paper.

Trial Examiner Norwood: You identify it as being what it purports to be?

The Witness: Oh, yes; yes, sir.

46222 (RESP. EX. 2346 was offered and received in evidence.)

46225 (RESP. EX. 2345-A to 2345-J was offered and received in evidence.)

By Mr. Brick:

Q. Am I correct in understanding that during the 8½ year period between February 1, 1927, and July 1, 1935, the Bessemer Limestone and Cement Company, an Ohio corporation, and a Respondent in this case, did not engage in the manufacturing or sale of cement?

A. That is absolutely correct.

46226 Q. Was it engaged in any business at all during that period?

Mr. MacIntyre: Just a moment.

I object to the question. I think it is obvious that it is objectionable.

Trial Examiner Norwood: Objection overruled.

A. It was not engaged in any business whatsoever.

J. A. POHLING, called as a witness on behalf of the Respondents, being first duly sworn, testified as follows:

*Direct Examination by Mr. Brick.*

I am employed by the firm of Donovan Leisure Newton & Lumbard and have been employed by that firm since September 1937. I am not an attorney. I am em-
46227 ployed by that firm to prepare tabulations and charts.

The witness identified Resp. Ex. 3483-A to D, inclusive, as the average factory value per barrel of Portland cement by quarterly periods for the years 1934 to 1937, inclusive. The numbers in the lefthand column represent Bureau of Mines districts. The states opposite each of these numbers include the states included by the Bureau of Mines in those districts. The source of the information appearing on those exhibits is the publication of the United States Bureau of Mines, numerous publications, entitled "Monthly Cement Pamphlet". The witness identi-
46228 fied Resp. Ex. 3483-A to D, inclusive, as being prepared by him.

The witness identified Resp. Exs. 3484 A-D, 3485 A-E, 3486 A-E and 3487 A-E, as reports from the Bureau of Mines which has been referred to as the source of information appearing on Resp. Ex. 3483 A-D. Resp. Ex. 3484 A-C is a tabulation of shipments and mill value by quarterly periods. He took the quantity and divided it into the estimated mill value to get the unit price which
46229 in this case amounted to $1.42. The estimated mill value in this particular instance was $2,298,000. This appeared in the second column under the heading "estimated mill value" and opposite "Eastern Pennsylvania, New Jersey and Maryland." He divided 1,615,000 barrels into $2,298,000 which gave him $1.42 appearing on Resp.

Ex. 3483-A. He obtained the other figures appearing on Resp. Ex. 3483-A in the same manner. He did not use any information with respect to the matter contained in Resp. Ex. 3483 A-D other than the material found as he had indicated in Resp. Exs. 3484 A-D, 3485 A-E, 3486
46230 A-E and 3487 A-E. He can vouch for the accuracy of the transfer of these figures on Resp. Ex. 3483-A from the Bureau of Mines' reports.

46245 The witness identified Resp. Ex. 3488 A-D inclu-
46246 sive as papers representing the amount of production of Portland Cement in Lehigh Valley as compared with the total production in the United States. He prepared this exhibit from information contained in the publication of The United States Bureau of Mines, entitled "Minerals Year Book."

The witness identified Resp. Exs. 3489 to 3507 as the documents of the Bureau of Mines to which he had referred as the source of the information appearing on Resp. Ex. 3488-A through D.

46247 By Mr. Brick:

Q. Did you use any material other than that contained in these Bureau of Mines' documents to which I have just referred in making up Respondents' Exhibit 3488-A through D?

A. No, sir; I did not.

Q. Now, will you explain, by illustration, the source of the figures contained on Respondents' Exhibit 3488-B, for example? Will you pick out any of those figures at random and explain how they came from the Bureau of Mines' documents?

A. Looking at Respondents' Exhibit 3489, which is a publication from the Bureau of Mines entitled "Cement in 1918," we find on page 575 a tabulation—

Q. Excuse me, Mr. Pohling. That is page 575 of Respondents' Exhibit, for identification, 3489?

A. That is correct. —a tabulation showing the amount of production of Portland cement in the Lehigh Valley, and another column which shows the same for the total United States, and a third column which gives the percentage of the Lehigh district as compared with the United States.

Q. Now, does Respondents' Exhibit, for identification,

3488-A through D, contain anything other than the
46248 barrels of the Lehigh Valley and the total barrels in the United States, and the percentage of the total production represented by the Lehigh Valley?

A. Does that paper represent anything other than that?

Q. Yes.

A. No.

Q. In other words, you have taken the figures, as I understand it, directly from the Bureau of Mines' reports, and have stated them on Respondents' Exhibit 3488-A through D?

A. Yes, sir.

Q. Will you, Mr. Pohling, vouch for the accuracy of the transfer of the information from these Bureau of Mines' reports to Respondents' Exhibit 3488-A through D?

A. I will, with certain reservations, where I found that the Government calculation is incorrect.

Q. State that situation.

A. Well, the Government has published the number of barrels in the Lehigh Valley and a figure denoting the same for the entire United States, and in the mathematical breakdown to arrive at the percentage the Government was off a few thousandths in arriving at the final three figure percentage.

Q. Thousandths of what?

A. Decimal point plus on a percentage.

Q. Thousandths of one percent?

A. Yes.

46249 Q. Are there any cases where the difference was more than a part of one percent?

A. No; not at any time.

Q. Am I correct in understanding that the differences were just error in developing the percentage of production for the Lehigh Valley as compared with the entire United States?

A. Yes.

Mr. Brick: Following the same practice as we did with regard to these other documents made up from the Bureau of Mines' publications, I offer Respondents' Exhibit No. 3488-A through D, and tender the Bureau of Mines' reports, constituting Exhibits, for identification, 3489 through 3507.

Trial Examiner Norwood: Those are merely tendered for checking; are they?

Mr. Brick: Yes, Your Honor.

Trial Examiner Norwood: That is, that last group?

Mr. Brick: Yes.

46253 The witness identified Resp. Ex. 3508 as a chart entitled "Portland Cement Statistics, U. S. Bureau of Mines, 1913-1937", which he had prepared. The chart was divided into five parts: one for estimated productive capacity; one for utilization of estimated capacity; one for production; one for inventories; and the last for in-
46254 ventory changes. The source of information for the preparation of this chart was a publication of the United States Bureau of Mines entitled "Minerals Year Book." He had used Resp. Exs. 3489 through 3509, and in addition had used other pamphlets published by the Department of the Interior, U. S. Geological Survey for the years 1913 through 1917, entitled "The Cement Industry in the United States."

In the preparation of these charts he did not use
46255 any information other than the information found in Resp. Exs. 3489 through 3507 and Resp. Exs. 3509 through 3513. The wavy line with diagonal black lines on the chart for estimated productive capacity represented a break in the scale, a jump from 20,000,000 to a hundred million barrels in order to cut down the over-all size of the chart.

He can vouch for the accuracy of the information transferred in these exhibits for identification representing Government publications, to this chart.

Mr. Werle: Then, if Your Honor please, I offer Respondents' Exhibit 3508 and tender to Mr. Wooden the additional Respondents' Exhibits representing the Government publications for checking purposes.

46256 By Mr. Werle:

Q. With respect to these details you have on each of these charts, Mr. Pohling, estimated productive capacity, utilization of estimated capacity, Portland cement production, Portland cement inventories, Portland cement inventory changes, all of those are terms used in these Government publications?

A. That is correct.

46259 Washington, D. C.,
Monday, October 14, 1940.

46260 RALPH CASSADY, JR., was thereupon called as a witness for the Respondent, and, having been first duly sworn, testified as follows:

Trial Examiner Norwood: Give us your name, please.

Mr. Bond: Ralph Cassady, Jr.

46261 Trial Examiner Norwood: Is this another economic expert?

Mr. Bond: Yes, sir.

Trial Examiner Norwood: Do you propose to prove the same things that have been covered by these other five?

Mr. Bond: We propose to cover many of the economic problems of the case as we see them.

Trial Examiner Norwood: You will have to make a special offer of proof here such as contain matter that has not been covered by these five, but not anything else.

Mr. Bond: We propose to ask the witness some of the same questions that have been asked previous witnesses, inasmuch as we are trying to cover all of the economic problems of the case as we see them, necessarily our offering testimony on the same subjects, and in this way showing the consensus of economic opinion on the problems of the case.

Trial Examiner Norwood: Well, I think the Counsel better make his offer of proof.

Mr. Bond: Shall I insert the qualifications in the record?

Trial Examiner Norwood: It will not be necessary until we decide whether we are going to hear him at all.

How many weeks have we been on your part of
46262 this economic testimony?

Mr. Bond: Well, as I recall, we have—I think we have eight or nine days of direct testimony to date; that is, I think, very close.

Trial Examiner Norwood: Well, I was thinking of the time that has been taken in the examinations.

Mr. Bond: Well, of course, the greater part of the time has been on cross-examination.

Trial Examiner Norwood: Yes, but cross-examination is necessitated by the direct examination.

Mr. Bond: Certainly.

Trial Examiner Norwood: I do not ask you this in order to determine how much more time should be allowed, but in order to get an estimate on how well the subject has been covered.

Mr. MacIntyre: If Your Honor please, I think you will recall that we started the hearings on September 4th, and all of them except last Friday have been used for economic testimony.

Trial Examiner Norwood: Yes.

Make your proffer.

Mr. Bond: Well, we offer to show through this witness that he is an expert economist qualified to testify as an expert in this case by virtue of his training and teaching experience and his study of the problems in the
46263 field of economics, and particularly in the field of marketing, and that if he were permitted to testify he would testify upon the same hypothetical questions which have been submitted to prior witnesses, and in general with their testimony on direct.

Mr. Wooden: How about their testimony on cross?

Mr. Bond: He would also testify that he was in disagreement with the economists called by the Commission upon many of their statements, such as have already been placed before previous witnesses, and on which they have also disagreed.

Trial Examiner Norwood: Is that the offer?

Mr. Bond: I think that is the offer.

Trial Examiner Norwood: What is your view?

Mr. Wooden: Of course, I would not admit, Your Honor, that this witness would testify in any particular way. I do not know what he would testify to, but to the extent that he would merely confirm the testimony of other expert witnesses called by Respondents, I submit that it is unduly and unnecessarily cumulative, and it also leaves out of question what he might testify to on cross-examination just as the other witnesses for Respondents may have done, and it brings no new feature into the case to say that this witness would testify in disagreement with witnesses called by the Commission because that is com-
46264 prehended in what the preceding witnesses for Respondents have done.

Trial Examiner Norwood: I think that the Counsel for Respondents might enumerate the experts that he wishes

to introduce for this purpose; in other words, put it on the record, what economists stand ready to—

Mr. Bond: I see no purpose in doing that, if Your Honor please, if we are not going to be permitted to examine him.

Trial Examiner Norwood: I am going to exclude that particularly as cumulative.

Mr. Bond: We stand ready and planned to call other witnesses, a group of them, comprising men on the staffs of the leading universities of the country to show this great consensus of opinion on these subjects.

Your Honor will appreciate that the witnesses' testimony would not be a mere repetition, because each expert brings to the problem his own reasoned opinions and his line of reasoning in support of his conclusion is always from a somewhat different angle although the conclusion may be the same as that of previous witnesses.

Trial Examiner Norwood: Well, we have five different angles and it has been most interesting, but we have spent six weeks on it, and we haven't any more time for that feature of the case, so I shall sustain the objection. Counsel has his exception.

46265 Mr. Bond: We feel, if Your Honor please, that so long as we keep within the time allotted to conclude our direct case we should be given considerable freedom in allotting that as between expert testimony, industry and other testimony, and that if we in our judgment feel that we want to devote further time we should be permitted to do so. I say with all deference we feel that we have a right to allot it in that way.

Trial Examiner Norwood: I think there is a very serious obligation on every one connected with this case to expedite it and to close it as soon as we can. We have a wealth of information now.

Mr. Wooden: Merely keeping within the time allotment does not meet the question of undue accumulation. That applies at any time.

Trial Examiner Norwood: I think we should not take an hour longer than absolutely necessary now to get any further necessary, relevant, and very desirable information.

46268 Washington, D. C.
Tuesday, October 15, 1940.

46269 J. A. POHLING was thereupon recalled as a witness for the Respondents, and having been previously sworn, testified further as follows:

46278 (RESP. EXS. 3468-A to H, 3469-A to N, 3470-A & B, 3471-A to F, 3472-A to D, 3473-A to F, 3474-A to D, 3476-A to O, 3477-A to B, 3478-A to E, 3479-A to D, were offered and received in evidence.)

By Mr. Withrow:

Q. Now, Mr. Pohling, I show you Respondents' Exhibit 3475-A to K, for identification, and ask you if that is the tabulation which you used in connection with the preparation of Respondents' Exhibit 3514, for identification?

A. Yes, it is.

Q. Will you just take the first station on that tabulation there, Respondents' Exhibit 3475, which is Topock, Ariz., and tell us how you took the information from
46279 the tabulation and put it on Exhibit 3514?

I first prepared a map of the State of Arizona, showing the carloading delivery stations, as listed in this tabulation. Alongside the name of the station, Topock, there is a rate of 47.5, which is found on Mr. Ussery's tabulation, Respondents' Exhibit 3475-A, under the heading "From El Paso, Texas." Alongside of that I have 30/5, which is the rate from Crestmore, Calif., as noted on Mr. Ussery's tabulation.

Q. And is that the process you have followed for the other stations?

A. Yes; it is.

Q. I notice on your map here, No. 3514, Mr. Pohling, that certain of the numbers are in purple and certain of them are in green. Will you explain to the Examiner what the green figures represent?

A. The green figures are rates from Crestmore, Calif.

Q. And the purple or violet numbers?

A. From El Paso, Texas.

46280 Q. In the center of the State of Arizona I see opposite the station only one rate. Will you explain that?

A. Where the figure appears in the color black, it signifies that the rate from Crestmore, Calif., and the rate from El Paso, Texas, are the same identically.

Q. That is according to the tabulation of Mr. Ussery?

A. That is correct.

Q. Now, I see at the bottom, Mr. Pohling, a list of authorities. Will you tell us if these are the authorities listed by Mr. Ussery for his tabulation?

A. They are.

Q. And opposite them is an exhibit number. Are those the exhibits in this case?

A. Yes, sir.

46286 Q. Did you prepare Respondents' Exhibit 3515, Mr. Pohling?

A. I did, sir.

Q. And what was the source of the material which is charted on that exhibit?

A. Mr. Ussery's tabulation of the same date, which is Exhibit No.—Respondents' Exhibit 3480.

Q. And did you also refer to geographical open and prepay list of Agent F. A. Leland?

A. I did, sir, and that is Respondents' Exhibits 104, 106, and 3476.

Q. And I suppose in this instance, too, you used Rand-McNally as a guide for the general outline of the State?

A. I did.

Q. Do you vouch for the accuracy of this map?

A. I do.

Q. Now, you told us how you transposed the in-
46287 formation in connection with Respondents' Exhibit 3514. Did you follow the same procedure with reference to this map?

A. Exactly.

46322 The witness identified Resp. Ex. 3518-A to J as
46323 a tabulation which he prepared. He will vouch for its accuracy. The source for the tabulation were the invoices of the Peerless Cement. The invoices are in the courtroom. He did not go outside of those invoices in any way. The designation "Metropolitan Area of Detroit" is the area which he previously described; and [under] "To customers of the Peerless Company", lists of these types of customers is given and the witness said that it was the "same list here." The information for the column "Railroad, truck, barge or boat", which appears at

page 2-B of the tabulation, Resp. Ex. 3518-B, was listed under those columns on the face of the invoice. He vouches for this.

Mr. Withrow: Your Honor, I offer in evidence at
46324 this time Respondents' Exhibit 3518-A to J, for identification (handing documents to Mr. Wooden).

Mr. Wooden: That is objected to as incompetent, irrelevant, and immaterial, and as based upon incompetent data, and also, namely, the invoices, and as having no tendency to prove or disprove any of the issues in the case.

Mr. Withrow: Well, I would like Mr. Wooden—Mr. Wooden here very cavalierly and broadly says, "incompetent, irrelevant, and immaterial." Without specifying in any way in what manner.

Now, he has objected to two of our tabulations on the ground that maybe there is some information behind these invoices that would explain them. It is our contention that that is not a fact, but in the case of this exhibit that contention could not even be made in good faith, because all of the information,—there could be no explanatory information behind the invoices with reference to this exhibit at all, and I would like Your Honor to look at the document. It merely purports to show the volume of Portland cement shipments by railroad, truck, and barge, as shown on the face of invoice.

Now, going behind the invoices could not vary those figures in any respect whatsoever (handing exhibit to the Trial Examiner).

46325 Mr. MacIntyre: But, if Your Honor please, you will recall when these witnesses were on the stand from the various companies, and Mr. Withrow then attempted to show, to offer tabulations, showing bulk of shipments or volume of shipments by truck, and we subjected the witness to a voir dire examination, it was disclosed that the shipments thus made by truck were at delivered rail prices, and, therefore, not relevant to any of the issues of refusing to sell to buyers' trucks at the mills, so we cannot, under the circumstances, examine this witness to determine just what relation, if any, that this particular showing would have to the issues, and in the absence of an opportunity to do that the only objection that can be raised is to the point that Mr. Wooden just raised, and that is, incompetent, irrelevant, and immaterial on the face of it as it stands.

Mr. Withrow: In view of Mr.—

Trial Examiner Norwood: Yes, but wouldn't these invoices, themselves, say whether it is rail, went on rates,—price based on rail?.

Mr. MacIntyre: It will not disclose the facts as to whether or not the delivered cost to the customer was based on the basing-point price plus the Cement Institute railroad freight to that destination from the basing point.

46326 Trial Examiner Norwood: Why not?

Mr. MacIntyre: Simply because the invoice does not carry all of that information. It just will not show you how the price was built up. It will show the price.

Mr. Withrow: Since it was a zone price in Detroit, even the Commission went to the trouble of proving that through their own witnesses, all of this is a bunch of nonsense, when you get down to it, and in view of Mr. Wooden saying he would waive identification. I am going to offer in evidence at this time 26 volumes of Peerless Cement Corporation's invoices, which I previously covered, and covering the years 1932 to 1939, with the appropriate numbers of pages. These documents are all here in the hearing room, and I offer them at this time to be received in connection with this tabulation and in connection with the other tabulations which I will subsequently re-offer.

Trial Examiner Norwood: Now, right back there, what are dates of the invoices,—the invoices cover what dates?

Mr. Withrow: 1932 to 1939.

Trial Examiner Norwood: Well, I shall not receive any —Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. Wooden: I want the record to show that we

46327 are not making merely a formal objection based on lack of identification, but we are making a basic objection that these invoices now offered are incompetent, irrelevant, and immaterial, for the reasons previously stated.

Trial Examiner Norwood: I sustain the objection to the exhibits.

46328 Trial Examiner Norwood: The hearing will come to order.

The proffer of numerous bound books of invoices is pending. The invoices were described for the record by Mr. Withrow this morning. In stating that they were of-

fered he tendered them to Commission's Counsel for checking certain tabulations. The invoices have not yet been marked for identification; have they?

Mr. Withrow: I am going to request that they all be marked at this time.

Trial Examiner Norwood: I think they should be marked at this time.

Have you the number of the pages in each?

Mr. Withrow: The pages in each volume are numbered.

46329 Trial Examiner Norwood: Then, I will instruct that each book of invoices be given a single number, and I will ask you to state how many pages are contained in each one of the volumes.

Mr. Withrow: I have asked to have marked for identification certain documents, and they have been marked as follows:

Respondents' Exhibit, for identification, 3519, pages 1 to 1662.

Respondents' Exhibit, for identification, 3520, pages 1 to 1754.

Respondents' Exhibit, for identification, 3521, pages 1 to 1082.

Respondents' Exhibit, for identification, 3522, pages 1 to 1228.

Respondents' Exhibit, for identification, 3523, pages 1 to 1385.

Respondents' Exhibit, for identification, 3524, pages 1 to 1907.

Respondents' Exhibit, for identification, 3525, pages 1 to 1567.

Respondents' Exhibit, for identification, 3526, pages 1 to 1389.

Respondents' Exhibit, for identification, 3527, pages 1 to 1008.

46330 Respondents' Exhibit, for identification, 3528, pages 1 to 1557.

Respondents' Exhibit, for identification, 3529, pages 1 to 1162.

Respondents' Exhibit, for identification, 3530, pages 1 to 1321.

Respondents' Exhibit, for identification, 3531, pages 1 to 1496.

Respondents' Exhibit, for identification, 3532, pages 1 to 1407.

Respondents' Exhibit, for identification, 3533, pages 1 to 1115.

Respondents' Exhibit 3534, pages 1 to 1792, for identification.

Respondents' Exhibit, for identification, 3535, pages 1 to 1236.

Respondents' Exhibit, for identification, 3536, pages 1 to 776.

Respondents' Exhibit, for identification, 3537, pages 1 to 1368.

Respondents' Exhibit, for identification, 3538, pages 1 to 1682.

Respondents' Exhibit, for identification, 3539, pages 1 to 1356.

Respondents' Exhibit, for identification, 3540,
46331 pages 1 to 431.

Respondents' Exhibit, for identification, 3541, pages 1 to 1638.

Respondents' Exhibit, for identification, 3542, pages 1 to 1304.

Respondents' Exhibit, for identification, 3543, pages 1 to 1171.

Respondents' Exhibit, for identification, 3544, pages 1 to 1318.

(The documents above referred to were marked for identification "Respondents' Exhibits 3519 to 3544," both inclusive.)

Mr. Withrow: Your Honor, those are all the invoices and I have had them marked for identification Respondents' Exhibits 3519 to 3544, inclusive.

46332 J. A. POHLING thereupon resumed the stand and testified further as follows:

The witness identified Resp. Ex. 3545 as a tabulation which he had prepared from Medusa's invoices, which had been identified in this proceeding by Mr. Dawson of Medusa. These invoices are available in the courtroom. They are Resp. Exs. 3068 through 3088 and 4129, et seq.

In preparing Resp. Ex. 3545 he tabulated the invoice price of the Portland cement shipments with these invoices and the volume of shipments made at those prices. He believes Mr. Dawson testified to these particular prices. He

checked Mr. Dawson's testimony. When he has the effective date of the price change that refers to Mr. Dawson's testimony. The change in price will be noted on the invoice, if there are two or more prices invoiced
46334 on that date. He made the tabulation and can vouch for its accuracy.

Mr. Withrow: Your Honor, I offer in evidence Respondents' Exhibit 3545, for identification.

I will say at this time that as to the basic data which I have referred to, Respondents' Exhibits 3068 through 3088, inclusive, it was stated at the time that they were identified that we proposed to submit a tabulation in the future, and tendered Mr. Dawson for cross-examination on the invoices, and when Counsel for the Commission refused to cross-examine because the documents had not been offered, we offered the documents in evidence and Your Honor excluded them at that time, fully understanding that we proposed to submit a tabulation, and this is one of the tabulations concerning which we were speaking at that time.

I might also say that these invoices are in the hearing room here, to be examined by Counsel.

46341 The witness identified Resp. Ex. 3546 as a tabulation he had prepared from the invoices of Medusa. It purports to show a tabulation of the volume of shipments made at particular prices. In the lower left hand side there are certain published market prices. Reading across from left to right he shows all the shipments made during the time that published prices was in effect. Reading down under the first column, $2.16, all of the shipments made at the figure of $2.16 are shown. He vouches for its accuracy.

46343 Trial Examiner Norwood: We will reserve the ruling on that until Counsel has had time. He is going to check over the same basic data there with some other papers and let them all be acted on together.

The witness identified Resp. Ex. 3547 as a chart he had prepared from the invoices of the Medusa which have already been identified. The information here was obtained strictly from the invoices. The document purports to show volume of shipments by railroad and by truck. He vouches for its accuracy.

*Examination by Trial Examiner Norwood.*

The tabulation did not show whether there was a delivered price and whether or not the price was based
46344 on rail or truck shipments would be shown on a different tabulation.

*Examination by Mr. Withrow.*

There is nothing regarding price on this tabulation. The tabulation goes from January 1936 to September 1937; those were the only invoices introduced.

Mr. Withrow: Your Honor, I offer in evidence at this time Respondents' Exhibit 3547.

Mr. Wooden: I assume, Your Honor, that this would be handled like the preceding one, so far as giving us an opportunity to check with the invoices is concerned.

Trial Examiner Norwood: Yes. I will defer ruling on it.

46345 Mr. Withrow: Your Honor, at this time I would like to have the record show I am turning over to Counsel for the Commission the invoices, Respondents' Exhibits 3068 to 3088, inclusive.

The witness identified Resp. Ex. 3548 as a chart made by him from his tabulation of the invoices of the
46346 Medusa, Resp. Ex. 3545. The first graph, entitled "Published Market Price Per Barrel in Cloth Sacks"; shows the trend of prices as testified to by Mr. Dawson and as shown by the invoices. The second chart represents the shipments at and below the published market price. Taking the figure zero as shown on Resp. Ex. 3548 as being the current price, "we" find that shipments were made at the price of $2.16 up to January 8, 1936, when there was a change in price. "We" find that after January 8 shipments were still being made at the price of $2.16, which is designated by the same color now extending below the zero line. The same explanation would also apply, say, on January 2, 1937, to shipments at a new price above the line in green, and at an
46347 old price below the line. Then in September the new price is the new color again, brown. Each color represents a different price.

The information contained on the third chart, or diagram called "Total Shipments", is the total of all the

invoices contained in those exhibits tendered by Mr. Dawson. The basic data for all this is the invoices and Dawson's testimony as reflected in Resp. Ex. 3545. He vouches for the accuracy of those three tabulations on that one chart.

46352 By Mr. Withrow:

Q. One question, Mr. Pohling: This thing about total shipments, is that intended to be the total shipments of the Medusa Company?

A. It is nothing more than a tabulation, a total of the amount that it appears above and below the zero line, in the graph above it.

Q. That is the total shipments just in the metropolitan area of Cleveland?

A. That is correct.

Q. As Mr. Dawson defined it and identified the document?

A. Yes, sir.

46353 The witness identified Resp. Ex. 3549 as being prepared by him. The source of his information about the invoice price figures on the face of it (Resp. Ex. 3549) was a reflection back to Mr. Dawson's testimony since it covered the same particular area. The witness obtained the barrels under the various invoice figures from the invoices from the Diamond Portland Cement Company. When shown some invoices the witness identified them as the invoices to which he was referring.

46354 Mr. Withrow: I will ask the record to show that Respondents' Exhibit 3552 consists of invoices numbered consecutively from 1 to 399, and Respondents' Exhibit 3553 are numbered consecutively from 400 to 857.

By Mr. Withrow:

Q. Did you testify these were the invoices, Respondents' Exhibits 3552 and 3553?.

A. Yes, sir.

Q. And it was from those invoices that you got the shipments at the various figures contained on this tabulation?

A. Yes, sir.

Q. And also the total monthly shipments?

A. That is correct.

Q. I will ask you, Mr. Pohling, if Respondents' Counsel, whether or not they called to your attention any ex-

hibit in this case that referred to January 8, 1932, as effective date of the price change?

A. 1936.

Q. I mean 1936, January 8, 1936, as the effective
46355 date of the price change of the Diamond Company.

A. Yes, sir.

46356 Q. Mr. Pohling, I will ask you to refer to the invoices and tell us where you got the figure on the
46357 tabulation, "September 22, 1937"?

A. There is an invoice dated September 22, 1937, invoice No. 6555.

Q. Numbered what page?

A. Numbered 841.

Q. Is that one of the—

Trial Examiner Norwood: That is Respondents' Exhibit, for identification, No. 3553.

By Mr. Withrow:

Q. That is where you got the information for September 22d. Now, would you tell us where you got the information for January 2, 1937?

A. Invoice dated January 2, 1937, invoice No. 4373, which is page 486 of Respondents' Exhibit 3553.

Q. Do you vouch for the accuracy of that Respondents' Exhibit 3549?

A. I do.

Mr. Withrow: Your Honor, I offer in evidence at this time Respondents' Exhibit 3549, and I press for its acceptance at this time, either absolutely or subject to check.

I might say that we tender at this time for such examination as Counsel for the Commission wish to make, Respondents' Exhibits 3552 and 3553.

46360 Mr. Wooden: Your Honor, I think we will object to this pending offer as incompetent, irrelevant, and immaterial, and as an attempt to compare certain figures from documents that are not in evidence with certain deductions or certain figures deduced from some other information—I am not quite clear whether it is in the record or not, but, in any event, it seems to me that it is objectionable for the reasons stated.

Trial Examiner Norwood: Is there any information in the record anywhere, Mr. Withrow?

Mr. Withrow: The one about January 8th is in the record, because Mr. MacIntyre identified it himself, and offered it in evidence, and it was received.

With respect to the other information, the witness
46361 has testified that he found the date of January 2, 1937. He testified as to the invoices where he found a new figure, a new price, which he had not found previously to that. He said he found that in the invoices, and he testified the same thing with reference to September 22d. Now, apparently, the full purport of this objection is the use of the term "published market price," and if that is all the objection is, if it is no more fundamental than that, we would have no objection to having "published market price" changed to "invoice price" and have a note at the foot saying as of date of invoice price shown.

Mr. Wooden: Then it becomes a comparison of invoice price with invoice price, as I understand it.

Mr. Withrow: It is intended only for a tabulation of what is on the invoices. That is all it is and that is all there is to it; so it could only be a comparison of invoice price with invoice price.

Trial Examiner Norwood: Does that meet Counsel's objection?

Mr. Withrow: The whole purpose of this tabulation is to get this evidence in without the necessity of having to clutter up the record in this instance with 900 invoices and we have no desire to do that. However, if that is the only way it can be done, we will have to do it.

Mr. Wooden: It is further objectionable be-
46362 cause it undertakes to show different prices during the same period of time, without accounting for those differences—in other words, the same old question of contract shipments comes in.

Trial Examiner Norwood: Well, I will defer ruling on that, and will ask Counsel to see if they cannot make a sufficient correction there. I certainly hope we can avoid the necessity for putting in those invoices.

46368 The witness identified Resp. Ex. 3551 as being made by him and as being a tabulation of the shipments of Portland Cement by railroad or truck by the Diamond Portland Cement Company. The witness made it up by tabulating the invoices of Diamond here-
46369 tofore characterized as Resp. Exs 3552 and 3553. He took all of the invoices there.

The information about railroads and trucks appears on the face of the invoice. There is nothing on Resp. Ex. 3551 which does not appear on the face of the invoice. The witness vouches for the accuracy of this tabulation. He prepared it.

Mr. Withrow: I offer in evidence at this time, Your Honor, Respondents' Exhibit No. 3551, and I would like to press that the document be either received or rejected, or received subject to check at this time.

46370 Mr. Wooden: The objection is made to the document as irrelevant and immaterial.

Trial Examiner Norwood: I will ask Counsel to retain that with the others and give us his answer tomorrow.

46371 Washington, D. C.,
Wednesday, October 16, 1940.

46372 J. A. POHLING thereupon resumed the stand and testified further as follows:

*Direct Examination by Mr. Withrow (Continued).*

The witness identified Resp. Ex. 3554-A to J as a tabulation of the invoice price of Portland cement shipments by Peerless to customers within the metropolitan area of Detroit, Michigan from 1932 through 1939
46373 inclusive; Resp. Ex. 3516 A-J and Resp. Ex. 3554 A-J were identical in the figures but that a few changes had been made in the title. He obtained the information which is contained in Resp. Ex. 3554 A-J from the invoices of Peerless and there is no information contained there which goes outside of those invoices.

Yesterday, he defined customers for the purposes of this invoice survey, and what constituted the metropolitan area of Detroit. That testimony also applies to this new exhibit. He vouches for the accuracy of the tabulation.

The witness identified Resp. Ex. 3555 as a tabulation of the invoice price of Portland cement shipments by Peerless for the metropolitan area of Detroit, Mich-
46374 igan. Resp. Ex. 3555 and Resp. Ex. 3517 are identical in figures except that the total of one of the columns had been changed and a slight change had been made in the title of the entire tabulation. There are no

figures in Resp. Ex. 3555 which were not contained in the invoices, and the invoices are in the courtroom in all instances. He vouches for the accuracy of Resp. Ex. 3555.

46374 Mr. Withrow: Your Honor, at this time I would like to offer in evidence Respondents' Exhibits 3554-A to J, and Respondents' Exhibit 3555, and re-offer at this time Respondents' Exhibits 3518-A to J, Respondents' Exhibit 3518 not having contained any of the matter which it was our understanding was objected to.

In connection with this offer we are willing to
46375 concede, if these documents are received in evidence, for the purpose of this case that those Peerless invoices which show prices that are below the highest invoice price may be taken to be invoices covering shipments made on contracts entered into prior to the date that the first invoice of the then highest invoice price became effective, provided that Respondents are not foreclosed from showing at any subsequent time by oral or written evidence that any given invoice or invoices cover special prices, and provided further that nothing herein shall be taken to prove that the Peerless Cement Corporation did or did not sell at special or secret prices at figures below Peerless' then quoted market price.

Mr. MacIntyre: You mean that nothing contained in your concession,—is that correct?

Mr. Withrow: Nothing contained in the tabulation or concession. In other words, we do not want to admit more than the documents might show if they were identified by a witness. In connection with this offer the invoices covering, or as the supporting date of these tabulations, are available here in the courtroom and are tendered at this time for whatever use the Federal Trade Commission wants to make of them. They have been marked Respondents' exhibits, and are numbered Respondents' Exhibits 3519 to 3554.

46376 Trial Examiner Norwood: That is the one with the thousands of invoices?

Mr. Withrow: Yes. I have the exact total—I think it is about 35,000.

Trial Examiner Norwood: Well, the record shows it.

Mr. Wooden: Would there be any objection, then, to saying in the last clause that nothing should be taken to show that the Peerless Company either did or did not sell at special prices?

Mr. Withrow: As he read it, I thought you would probably ask that. It is perfectly all right.

Trial Examiner Norwood: You just make the change there.

Mr. Withrow: Provided that nothing therein shall be taken to prove that Peerless Cement Corporation did or did not sell at special or secret prices.

Mr. Wooden: Now, would there be any objection to our reserving the right to prove the non-existence of special prices?

46377 Mr. Withrow: Well, I naturally assumed that you had that right. We are the only ones that are conceding anything, but if you want to make a statement on the record, I will assent to it.

Mr. Wooden: All right. I would like to make a statement.

Nothing in the stipulation or agreement proposed by Mr. Withrow shall be taken to prevent Counsel for the Commission showing, by proper or competent evidence, that the Peerless Company did not make special prices in these invoices.

Trial Examiner Norwood: Yes.

Mr. Withrow: That is all right. I assume you mean by that that the tabulations as offered will not be taken to so prove that? That is our understanding.

Mr. Wooden: They will not prove anything either way on that.

Mr. Withrow: That is right.

Mr. MacIntyre: Unless modified by further evidence later.

Mr. Wooden: Yes; of course.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

Mr. Wooden: As the record now stands, Your
46378 Honor, we make no objection to Respondents' Exhibits 3554-A to J, 3555, and 3518-A to J, on any ground of competency, but do object on the ground that they are irrelevant and immaterial.

Trial Examiner Norwood: The objection is overruled. They are received as marked.

(RESP. EXS. 3554-A to 3554-J, 3555, and 3518-A to 3518-J, were offered and received in evidence.)

46379 The witness identified Resp. Ex. 3556-A-B as a tabulation which he prepared. The basic information

he used was the invoices of Diamond. Resp. Ex. 3556 and Resp. Ex. 3549 are exact duplicates of the figures contained in the tabulation except for few minor changes made as to the headings of certain columns. He vouches for the accuracy of Resp. Ex. 3556.

The witness identified Resp. Ex. 3557 as a chart
46380 which he prepared from the invoices of Diamond that were turned over yesterday afternoon. In. Resp. Ex. 3557 and Resp. Ex. 3550 also the figures are the same. There may have been a few changes as to the headings of certain columns, and the title. He vouches for the accuracy of Resp. Ex. 3557.

Mr. Withrow: Your Honor, at this time I would like to offer in evidence Respondents' Exhibits 3556-A and B, and 3557, with the statement that if they are received in evidence we will be very glad to withdraw our proffer of Respondens' Exhibits 3549 and 3550.

Mr. Withrow: In the event that either these or the substitute—that is, either Respondents' Exhibits 3549 through 3551, or 3556 and 3557, and 3551, are received in evidence, we are willing to make the same form of
46381 concession on behalf of the Diamond Portland Cement Company as we just agreed to in reference to the Peerless Cement Corporation, and by "the same concession," I mean the same concession by the Respondents, and agree to the same sort of statement by Mr. Wooden.

Mr. Wooden: In view of the statement just made by Mr. Withrow, and the reference to our preceding agreement as to limitations on the inferences to be drawn from the exhibits, we make no objection on the ground of competency to Respondents' Exhibits 3556, 3557, and 3551, for identification, but we do object on the grounds of their being irrelevant and immaterial.

Trial Examiner Norwood: The objection is overruled. The exhibits are received, subject to checking however.

(RESP. EXS. 3556-A, 3556-B, 3557, and 3551, were offered and received in evidence.)

46388 (RESP. EXS. 3545, 3546, and 3548, were offered and received in evidence.)

46390 (RESP. EX. 3547, was offered and received in evidence.)

The witness identified Resp. Ex. 3558 as a document which he had prepared from the publications of the United States Bureau of Mines entitled "Cement Pamph-

46391 lets." The basic data for this particular chart is contained in the basic data handed to Commission's counsel for other charts last Friday.

The Bureau of Mines in its publication "Minerals Year Book" has a chapter devoted to cement, which contains a table showing the monthly estimates of Portland cement shipments throughout the United States. He tabulated the monthly shipments from the year 1928 to the year 1937, and transferred them to this chart. He vouches for the accuracy of the chart.

(RESP. EX. 3558, was offered and received in
46392 evidence.)

The witness identified Resp. Ex. 3559-A and B as a chart which he had prepared from the United States Bureau of Mines' "Minerals Year Books" which were submitted to the Commission on Friday. He took the figures from the "Minerals Year Book" and put it
46393 on the tabulation. He vouches for the accuracy of these figures.

Resp. Ex. 3558 was a chart based on figures as noted on Resp. Ex. 3559.

(RESP. EX. 3559-A and 3559-B, was offered and received in evidence.)

The witness identified Resp. Ex. 3560 as being
46394 made by him. The source of the information contained first on the top graph entitled "Highest Invoice Price Per Barrel in Cloth Sacks" is the invoices of the Peerless Cement Corporation, These invoices have been turned over to Commission's counsel. That also applies to the two other charts or other two tabulations on this master chart. He purports to show by the top chart the trend of prices reflected by the invoices. He defined the price he would show on that line, on any given day, as the highest price that he found on the invoices for that day. The second chart purports to show the volume of shipments at the prices noted on the invoices.

The zero line represents the price he found on the
46395 invoices for that day. The colors above the line represent the shipments at that price, the highest invoice price he found for those days. The height of those columns above represents volume. The columns below the zero line represent the volume of shipments made at a price other than the highest, in other words, price below the highest. The abbreviation "H. I. P." means, Highest

Invoice Price. Taking 1935, for example, where the green color appears above the zero line, it means that was the only price he found on the invoice. It was both the highest, lowest, and in-between prices. Where the green line extends beneath the zero line it signifies that that was not the highest price on those days of that period, where covered by a different color above the line. When he
46396 refers to prices throughout the entire chart he means invoice prices and not quoted prices. The
46397 color green whether above or below the zero line represents a particular price. When it appears above the line it signifies that it was the highest invoice price he finds. When it appears below the line it was not the highest. The same testimony applies to the other colors which are on there; for instance, blue and orange. If it was the highest price it is above the line; if it was not, the color drops beneath the line. As to the dark yellow color referred to in the note as "Price below highest invoice price as noted", he started off with the year 1932, with the particular highest invoice price found as of those dates. In this particular case he had to use a different color because he could not have that color above the line because it was never the highest invoice price. So that those colors represented by that dark yellow he never found to be the highest invoice price at any time. From time to
46398 time when he had the yellow price he has a figure underneath it which represents the amount below the highest price on those particular months that he found on the invoices. Taking for example 1933 there is dark yellow and blue and orange and brown below the line, the existence of which four colors below the line in that one month simply means that there were shipments being made at four prices below the highest, in other words, five prices were found on the invoices. Below the line those columns of color are only one fourth as wide as the color above but the width of the color has no significance. It is the length and height.

The basis of the material contained on the bottom chart entitled "Total Shipments" was the same, the invoices of the Peerless Cement Corporation.

Going back to explain the second graph, each color
46399 represents a particular price. The color green in this case represents the price of $2.10. There was a change in price. The changes are, therefore, on the zero line. It now becomes brown, and the shipments made at

the invoice price of $2.10 are now made at the same price, which is beneath the highest price, and the volume drops beneath the zero line. The relationship between the height of the column and the second graph and the third graph is just the total above and below the zero line.

The witness testified that the word "customers", appearing on this other chart, is defined in the same manner as the definition of "customers" which he gave the other day. The definition of "metropolitan area of Detroit" is also the same as that which the witness gave the other day.

The record omitted Hamtramck, but Hamtramck is included in this tabulation and should have been included the other day.

46400 The witness testified that he vouches for the accuracy of these three charts on this tabulation.

Mr. Withrow: Will you mark this chart.

(The chart was marked for identification "Respondents' Exhibit 3561.")

The witness identified Resp. Ex. 3561 as a chart he had prepared from the invoices of Peerless. The top graph represents the highest invoice price that he found on the invoices, as he had described for Resp. Ex. 3560.

46401 The second graph was prepared and purports to represent the same thing which the second graph on the other chart represented. The same applies to the total shipments just beneath that. He vouches for its accuracy.

Mr. Withrow: Your Honor, I offer in evidence at this time Respondents' Exhibits 3560 and 3561.

Mr. Wooden: I would like to ask whether the same stipulation entered into with regard to other tabulations regarding the Peerless Cement Company in this particular area may be taken to apply to these two offered exhibits? I mean by that the agreement regarding the relation of contract prices to quoted prices or invoice prices.

Mr. Withrow: Yes.

46402 (RESP. EXS. 3560 and 3561 were offered and received in evidence.)

46403 The witness identified Resp. Ex. 3562 as a chart which he had prepared purporting to be a picture of the freight rate structure in Kentucky, based on comparative rates from Kosmosdale and competing mills. His sources of information were "Leland's Open and Prepay Station List", No. 54; I. C. C. No. A-19, effective April 15, 1939, and The Cement Institute Kentucky rate book No. 3 and Supplements 1 through 6.

46404 By Mr. Withrow:

Q. Now, Mr. Pohling, I wonder if we can spread out this map some place, as I want to ask you some questions about it to show how it operates.

I notice that Respondents' Exhibit 3562 has, on the upper lefthand side, certain lines in red. Would you explain to the Examiner what those lines purport to show?

46405 A. The rate book as used here has an alphabetical listing of stations, and tracing through those stations I found that Kosmosdale has a lower rate than any other mill on all these stations as would be listed on these particular railroads.

Q. Well, now, would you tell the Examiner why, for instance, you picked out Almshouse to show here on this map and not any intermediate points between, say, Owensboro?

A. At the particular station, Almshouse, Kosmosdale had a lower freight rate than any other mill, and according to the geographical listing of Leland's Open and Prepay Station List the next station was Louisville, at which station the Institute rate book showed a rate differing or a rate equal to the rate from another mill.

Q. Now, am I correct in understanding that every place here where you have either a line or a station in red that Kosmosdale has a freight advantage?

A. A rate lower than any other mill.

Q. That is right. That is what I meant.

Now, after this red, you find, it places a line here in purple. Now, would you just explain to the Examiner when a line appears in purple what it means.

A. The particular color purple signifies a rate from Kosmosdale equal to rates from one mill.

Q. That is, any other mill?

A. Any other mill.

46406 Q. And does this map purport to show all of the rail lines you found in the State of Kentucky?

A. Yes, sir.

Q. And have you shown some color—I mean, by some color, every rail line in Kentucky?

A. Yes, sir; I have.

Q. Now, I see a legend over here to the left. Is that the legend which explains the number of mills which either have the same or different rates from Kosmosdale?

A. Yes, sir.

Q. Now, would you tell on what basis you put in the

towns which appear on the face of this document—I mean, first, within the State of Kentucky?

A. The cities having a population of 10,000 or over.

Q. And how have you represented them?

A. By a circle within a circle.

Q. And then these other towns, such as Wilson, on what basis did you select the towns such as that?

A. Those are stations where the rates would change according to The Cement Institute rate book.

Q. Now, I see around outside the State of Kentucky you have certain points spotted. What was the source of your information?

A. The map of the United States showing location of cement mills which I believe is an exhibit in this case.

46407 Q. Exhibit 1?

A. I believe it is Exhibit 1.

Q. Are those the exact locations or the approximate locations of outside mills?

A. Approximate locations.

Q. Now, Mr. Pohling, I notice here that the date is—the I. C. C., effective April 15, and certain supplements effective April 15, 1939. Would you tell the Examiner why you chose, or why 1939 was chosen, if you know?

A. There was a new issue of the rate book at that time. Rather than refer to the old rate book with numerous supplements we had all the information contained in one document, and the station list, Leland's Open and Prepay, which is Respondents' Exhibit No. 3563, is issued effective April 15, 1939, in one volume. Going back, we would have to have a volume with numerous supplements and correction sheets.

Q. So am I correct in understanding that that date was chosen merely for convenience?

A. Merely for convenience.

Q. And do you know whether or not all the rates have been changed several times in the rate books due to emergency increases and decreases as shown by the supplements?

A. Yes.

Q. Do you vouch for the accuracy of this map, Mr. Pohling?

A. Yes, sir; I do.

46408 Mr. Withrow: Your Honor, I offer in evidence Respondents' Exhibit 3562, and tender as supporting data to the Commission Respondents' Exhibits 3563, 3564, and 3565-A to F.

46409 Mr. Wooden: Well, we object to the exhibit, Your Honor, as incompetent, irrelevant, and immaterial. We say that it is a showing which is in effect nothing but briefing some of the record evidence plus some material that is not in evidence, and which is subsequent to the date of the complaint, and that it is a very incomplete and impartial picture of the rate relationship even which it purports to represent between the Kosmos mill and
46410 other mills in adjoining territory. We object to it as being an attempt to brief based in part upon record information and in part upon material that is not in the record.

46412 Trial Examiner Norwood: But as to the other point, as to the tendency of this to show a situation, it would require a mill to adopt such a method, in that way you negative collusion—

Mr. Wooden: It is irrelevant for that purpose.

Trial Examiner Norwood: I think he is entitled
46413 to show just what sort of a fix he was in on rates.

46414 Trial Examiner Norwood: Do you propose to show—I mean, if the record does not already show
46415 it—that the situation as displayed by this exhibit is the same as it was during the period of the complaint?

Mr. Withrow: Yes, Your Honor, I do not think there can be any serious doubt about it.

Mr. Wooden: There is no attempt to show it.

Trial Examiner Norwood: Well, with that understanding, I shall overrule the objection and receive it, subject to check.

46417 Trial Examiner Norwood: Well, I think we have reached the stopping place as to the charts and graphs. These other charts were received without objection, and this one, I supposed, was on the one same basis.

I shall have to reverse my ruling as to the receipt of this latter one.

Mr. Withrow: Your Honor had received this, and after Mr. MacIntyre's speech you reversed your ruling. I do not know what point Mr. MacIntyre made that was the basis of Your Honor's reversing your ruling. If it is because of this chart I think it is a very unsound objection because this is the easiest way and the most convenient way to all concerned to have this information in the record.

46418 Trial Examiner Norwood: Now, you asked me a question. Let me answer it.

I made my reversal on the basis of the entire discussion, but principally upon the position that Mr. Wooden took there, which I did not think he had taken with respect to these.

Mr. Withrow: Namely, that it was a chart?

Trial Examiner Norwood: Yes.

46423 *Cross-Examination by Mr. Wooden.*

Q. Mr. Pohling, I am showing you certain pages marked for identification as Commission exhibits from the various publications of the Bureau of Mines, which you identified on direct examination as being the underlying data used in a number of your compilations and tabulations. The first one I show you is marked Commission's Exhibit 3268, for identification, and is page 127 of Respondents' Exhibit, for identification, 3509. Did you identify it as being that page in the Respondents' Exhibit 3509, for identification?

A. Which particular tabulation?

Q. The page that I marked, the whole page, 127.

A. You mean for what did I use these figures?

Q. No; I did not ask you that. I say, do you identify that page as being a page of the pamphlet marked Respondents' Exhibit 3509?

46424 A. Yes, I would use this.

Q. I now show you a paper consisting of one printed sheet, marked "Commission's Exhibit 3292, for identification. Will you identify it as a sheet in the exhibit which was marked Respondents' Exhibit 3510, for identification?

46426 A. My answer to the last question regarding Commission's Exhibit 3292 is "No."

Mr. Wooden: What was the question?

46427 The Witness: Whether I used anything on that page in compiling my tabulation.

Mr. Wooden: You were not asked any such question. Will you read the question, please?

Trial Examiner Norwood: Read it.

Mr. Wooden: The other Reporter has that question. Do I understand, Mr. Brick, you are unwilling to agree that these pages marked as Commission's exhibits, for identification, are certain pages from various documents which

have been heretofore marked as Respondents' exhibits, for identification?

Mr. Brick: Well, certainly, Mr. Wooden, I will be very pleased to concede that the pages which you have marked are pages contained in Bureau of Mines' pamphlets, one for 1915 and the other for 1914, but I will not concede that they are the basis for any material appearing on the tabulations made by this witness.

Mr. Wooden: May that be applied to this whole list of exhibits, for identification, that have been given Commission's numbers, running from 3268 to 3302?

Mr. Brick: No, sir. That is not the fact, and I object to your asking any questions of this witness concerning any material which he did not originally identify as being source material for his tabulations.

Trial Examiner Norwood: The objection is overruled.

46428 By Mr. Wooden:

Q. Now, the question—

Mr. Brick: That is simply a forecast, Judge.

Trial Examiner Norwood: Yes.

By Mr. Wooden:

Q. Now, the question I asked you, Mr. Pohling, and which I repeat, is whether or not the page number 238, and marked Commission's Exhibit 3292, for identification, is a part of the printed pamphlet which you have referred to as Respondents' Exhibit No. 3510, for identification?

46429 Trial Examiner Norwood: On Counsel's statement, I shall overrule his objection and shall also state that he may have his objection to the entire line.

Proceed with your examination.

By Mr. Wooden:

Q. I am showing you page No. 235, marked for identification as Commission's Exhibit 3269, and I will ask you if that is a part of the document which has hitherto been marked as Respondents' Exhibit 3510, for identification?

46430 A. Yes.

Q. Now, showing you printed pages marked Commission's Exhibit 3270-A and B, and Commission's Exhibit 3293, being printed pages 201, 202, and 203, are those pages a part of the documents hitherto marked for identification as Respondents' Exhibit 3511?

A. Yes, sir.

46431 Q. I am showing you printed pages Nos. 354 and 355, and marked for identification as Commission's Exhibit 3271-A and B, and will ask you whether they are part of a pamphlet hitherto marked for identification as Respondents' Exhibit 3512.

Mr. Withrow: May I have that question read, please?

Trial Examiner Norwood: Read the question.

(Question read.)

A. Yes, sir; they are.

By Mr. Wooden:

Q. I now show you printed pages numbered 356, 357, and 358, and marked for identification as Commission's Exhibits 3273 and 3302-A and B, and will ask if those pages are a part of the document or pamphlet hitherto marked for identification as Respondents' Exhibit 3513.

A. Yes, sir.

Q. I show you a printed page, No. 578, and marked for identification as Commission's Exhibit 3273, and ask you if that is a part of the pamphlet or document hitherto marked for identification as Respondents' Exhibit 3489?

A. Yes, sir; it is.

Q. I show you two printed pages numbered respectively 395 and 398, and marked respectively as Commis-
46432 sion's Exhibit 3274 and 3294, for identification, and will ask you if those are a part of the pamphlet or document hitherto marked for identification as Respondents' Exhibit 3490?

A. They are.

Q. I show you two printed pages numbered 271 and 275, respectively, and marked for identification respectively as Commission's Exhibits 3275 and 3295, and will ask you if those pages are a part of the document, the pamphlet, hitherto marked for identification as Respondents' Exhibit 3491?

A. They are.

Q. I show you printed pages numbered respectively 220, 221, and marked for identification Commission's Exhibit 3276-A and B, also a printed page numbered 223, and marked for identification as Commission's Exhibit 3296, and will ask you if those pages are a part of a pamphlet or document hitherto marked as Respondents' Exhibit 3492, for identification?

A. They are.

Q. I show you printed pages marked Commission's Exhibit 3277-A and B, and numbered 236 and 237 at the top, also a printed page marked Commission's Exhibit 3297, and numbered 239 at the top, and ask you if those pages are a part of a pamphlet or document hitherto marked for identification as Respondents' Exhibit 3493?

A. Yes, sir; they are.

Q. I show you a printed page marked Commis-
46433 sion's Exhibit 3278 and bearing the printed number 301, and ask you if it is a part of the pamphlet or document hitherto marked Respondents' Exhibit 3494, for identification?

A. They are.

Q. I show you a printed page marked Commission's Exhibit 3279, for identification, and bearing a printed number 366, and ask you if it is a part of the document or pamphlet hitherto marked as Respondents' Exhibit 3495, for identification?

A. Yes, sir.

Q. I show you a printed page marked Commission's Exhibit 3280, for identification, and bearing a printed number 263, and ask you if it is a part of the document or pamphlet hitherto marked Respondents' Exhibit 3496, for identification?

A. Yes, sir; it is.

Q. I show you a printed page marked Commission's Exhibit 3281, for identification, and bearing a printed number 318, also a printed page marked Commission's Exhibit 3298, for identification, and bearing a printed number 322, and ask you if those pages are a part of a pamphlet or document previously identified as Respondents' Exhibit 3497?

A. Yes, sir; they are.

Q. Showing you two printed pages marked for identification as Commission's Exhibit 3282-A and B, and bearing the printed numbers 279 and 280, are they a part of a pamphlet or document previously marked as Respondents' Exhibit 3498, for identification?

46434 A. The same answer.

Q. I show you two printed pages marked for identification as Commission's Exhibit 3283-A and B, and bearing the printed numbers 354 and 355, and ask you if they are a part of the document or pamphlet previously marked as Respondents' Exhibit 3499, for identification?

A. They are.

Q. Showing you a printed page, marked Commission's Exhibit 3284, for identification, and bearing a printed number 401; also a printed page, marked for identification as Commission's Exhibit 3299, and bearing printed page number 405, I will ask you if those two pages are a part of the document previously marked as Respondents' Exhibit 3500, for identification?

A. They are.

Q. Showing you a printed page, marked Commission's Exhibit 3285, for identification, and bearing printed number 415, is that page a part of a document or pamphlet previously marked as Respondents' Exhibit 3501, for identification?

A. Yes, sir; it is.

Q. Showing you a printed page marked Commission's Exhibit 3286, for identification, and bearing a printed number 534, is that page a part of a pamphlet or document previously marked as Respondents' Exhibit 3502?

A. It is.

Q. Showing you two printed pages, marked for
46435 identification as Commission's Exhibit 3287-A and B, and bearing the printed numers 497 and 498, are those pages a part of the pamphlet previously marked Reespondents' Exhibit 3503, for identification?

A. They are.

Q. Showing you two printed pages marked Commission's Exhibit 3288-A and B, and bearing printed numbers 74 and 75, and also a printed page marked Commission's Exhibit 3300, for identification, and bearing printed page No. 79, are those pages a part of a document previously marked Respondents' Exhibit 3504, for identification?

A. They are.

Q. Showing you two printed pages, marked Commission's Exhibit 3289-A and B, for identification, and bearing printed numbers 188 and 189, are those pages part of the document previously marked Respondents' Exhibit 3505, for identification?

A. Yes; they are.

Q. Showing you a printed page marked Commission's Exhibit 3290, for identification, and bearing printed No. 1148, is that page a part of a document previously marked Respondents' Exhibit 3506, for identification?

A. Yes, sir; it is.

Q. Showing you a printed page, marked Commission's Exhibit 3291, for identification, and bearing printed No. 9, and also a printed page marked Commission's
46436 Exhibit 3501, for identification, and bearing printed No. 14, are those pages part of a document previously marked Respondents' Exhibit No. 3507, for identification?

A. They are.

46437 P. A. THOMPSON was thereupon called as a witness for the Respondents, and, having been first duly sworn, testified as follows:

46339 *Direct Examination by Mr. Brick.*

I am associated with the Oklahoma Portland Cement Company and the Arkansas Portland Cement Com-
46440 pany. I am sales manager of the Oklahoma Company and general sales manager of the Arkansas Company. I have been associated with the Oklahoma Company since 1908 and the Arkansas Company since 1928 or 1929, 1928, I believe. I have been sales manager of Oklahoma some twelve or fourteen years and sales manager of the Arkansas Company since it was organized. I first became associated with the Oklahoma Company in May 1908. I have not been connected with any other cement companies prior to that time. In connection with the position I hold with these two companies I am in charge of sales. I am in full charge of the sales for each of the companies subject to the veto of my superiors.

46441 Q. To what extent do you participate in the price and sales policies of the two companies?

A. I have charge of that.

Q. Do you participate at all in the determination of matters of policy for the companies in the Ideal group other than the Arkansas and Oklahoma companies?

A. No.

Q. To what extent, if at all, do the Ideal and other companies in that group participate in the formulation of policies for either the Oklahoma or Arkansas companies?

46442 A. The other companies have nothing to do with the Arkansas and Oklahoma companies. It is left up to the local management.

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46481 P. A. THOMPSON thereupon resumed the stand and testified further as follows:

*Direct Examination (Continued) by Mr. Brick.*

46483 Q. Mr. Thompson, does either the Oklahoma or Arkansas Company compete in the same territory as the Oregon Portland Cement Company?

A. No.

Q. To what extent, if any, do your companies compete in the territory of the Southwestern Portland Cement Company?

A. We ship into some territory from our Ada plant to Southwest Texas and Southwest New Mexico, and
46484 the oil fields around Hobbs, N. M., and I suppose that would extend up in West Texas to about Amarilla.

Q. What company is your most active competitor in that territory?

A. What companies?

Q. No, what company.

A. Well, that is hard to say. There are several of them pretty active in that same territory. Perhaps you might say in Southwest Texas and in Southeast New Mexico the Southwestern is perhaps the most active company.

Q. The most active competitor in that area?

A. Well, I would want to include perhaps Trinity and Atlas and maybe Lone Star.

Q. When you went with the Oklahoma Company in 1908, Mr. Thompson, do you recall how they were selling cement at that time?

A. At destination prices.

Q. And what were your duties when you first became associated with that company?

A. Shipping clerk, invoice clerk.

Q. How did you make out your invoices at that time?

A. We made them out at destination prices.

Q. And where did you obtain the destination prices which you stated on the invoices?

A. From a destination price list in our office.

46485 Q. Do you keep records of destination prices in your office at the present time?

A. Yes, sir.

46486 Q. In what form do you keep those records, Mr. Thompson?

A. We keep them in alphabetical station order form.

Trial Examiner Norwood: Card index?

The Witness: No; loose-leaf book.

By Mr. Brick:

Q. Are those books kept by destinations?

A. The list shows the destination prices.

Q. Are they what you might call price books?

A. Yes; price books.

Q. And what is the purpose in having such records, Mr. Thompson?

A. For quick ready reference. Most of our prices are quoted over the telephone.

46487 Q. Do those records show base prices?

46488 Q. Do you supply your salesmen with these price lists, Mr. Thompson?

A. We supply our salesmen with the price lists.

Q. And in what form are those price lists?

46489 A. The price list is an alphabetical station list, showing destination prices only in cloth sacks.

The witness identified Resp. Ex. 3577-A to Z-24 as the salesman's price book furnished by "our" office to the field men for stations in Oklahoma. The form of that price list is similar to the forms of price lists furnished by the witness to all salesmen. The office price list shows the freight rates, but the price lists to salesmen do not. Freight rates are not given to any salesman.

46491 (RESP. EX. 3577-A to 3577-Z-24 was offered and received in evidence.)

By Mr. Brick:

Q. Mr. Thompson, do you give any price information to your salesmen other than the price information of the character contained in Respondents' Exhibit 3577-A to Z-24?

A. No, that is all.

46493 Q. Do you send quotations to customers announcing your prices?

A. Yes, at intervals.

Q. And do you do that in connection with each of the companies?

A. Yes.

Q. Both Arkansas and Oklahoma?

A. Yes.

Q. Now, does either the Arkansas or the Oklahoma Company ever sell their respective brands at prices
46494 lower than the published prices?

A. Yes, we have.

Q. Does that apply to both of the companies, Mr. Thompson?

A. Yes.

Q. Was the order which the Ellis & Lewis Company gave you, and which you testified about yesterday, an illustration of that situation?

A. Yes.

Q. Now, under what circumstances—that is, under what usual circumstances do you give customers the benefit of prices which are less than the prices generally quoted and announced by your companies?

A. We are willing to meet prices quoted by competitors.

Q. And do you do that?

A. We did in that case.

Q. And do you do that as a customary or general thing?

A. Yes.

Q. Now, how do you find out prices of competitors which might be lower than the going market prices at vari-
46495 ous destinations where you sell?

A. We find out by keeping in touch with our customers.

Q. Who makes the decision with respect to the quoting by Oklahoma or Arkansas of prices under the respective published prices of those companies?

A. The sales manager.

Q. Is such price quoted, Mr. Thompson, both to large and small customers?

A. Usually it is on large jobs.

Q. Is the practice of selling at a price less than the published prices a usual or infrequent practice?

46496 A. It happens right along, breaking out first one place and then another; I would say, almost continually.

Q. As of July, 1927, Mr. Thompson, was your Arkansas mill at O. K. Junction a base or non-base mill?

A. Well, we have never set up our prices at Arkansas on the basis of any fixed mill figure, if that is what you mean. I suppose that you would say that it was not a base mill.

Q. Did you have anything to do with determining the price policy adopted by the Arkansas Company at the time it began business?

A. Yes.

Q. What were the considerations which led to the
46497 decision not to quote prices which would reflect a base figure at O. K. Junction?

A. Well, we had followed the practice of not having a base on our Ada mill ever since we had been in business, and we decided that it was pretty good policy, so when our Arkansas plant entered the market we used the same method from that plant as we were using from the other plant.

Q. Are there any large metropolitan markets in the close vicinity of your Ada mill—I mean, of your O. K. Junction mill?

A. Well, I would say no, if you talk about cities you have in this part of the country. We think we have some pretty good towns, but they are just towns, I suppose.

Q. Do you make lists of base figures which you find reflected in prices of competitors which are quoted in the sales territory where your companies operate?

A. Yes, we make a note of them.

Q. Do you send copies of such lists to your Denver office?

A. Yes.

Q. Do you know what the Denver office does with those lists?

A. Well, they receive lists from the other Ideal sales managers and compile them all on a list, and return a copy to us,—I assume to the others, too.

Q. I show you Commission's Exhibit 3176, and ask you if that is the type of list which you received from the Denver office.

A. Yes, that is about it.

46498 Q. Have you ever sent any copies of your list of price bases to competitors?

A. No, sir.

Q. Have you ever received any such lists from competitors?

A. No.

Q. Have you had any agreement, Mr. Thompson, with any of your competitors as to what mills would be considered base mills and what mills would be considered non-base mills?

A. No.

Q. Does that apply to both of your companies, the Oklahoma and Arkansas Companies?

A. Yes, sir.

46499 Q. Do you distribute lists of price bases which you receive from your Denver office, within your own organizations?

46500 A. No.

Q. Now, did you file prices for the Oklahoma and Arkansas Companies, Mr. Thompson, at the outset of the price filing period under the N.R.A. Code?

A. Yes.

Q. How did you go about compiling the list of prices which you so filed?

A. We made up a list from the destination price book in our office, or price books.

Q. What was your understanding as to the types of prices which you could file under the N.R.A. Code?

A. The type?

Q. Yes.

46501 A. We could file anything we wanted to in the way of prices.

Q. And under what circumstances did you find it necessary to file prices under the Code?

A. We were required to by the N.R.A. Act, as I recall.

Q. And under what circumstances was it necessary for you to file subsequent prices after you filed your initial prices?

A. The Code required us to file any changes in our price lists from time to time.

Q. Where do you secure your freight rate information, Mr. Thompson, for use in checking competitors' prices and in making up the price which you broadcast to the trade?

A. Our traffic department.

Q. Where is that located?

A. Denver, Colo.

Q. Does that department at Denver compile freight rates for your use?

A. Yes.

Q. And do those compilations cover all of the rates required by you in connection with the sales territory of each of the mills?

A. Yes.

46502 The witness identified Resp. Ex. 3578-A to Z-67 as an Oklahoma rate book, similar to what is furnished by Oklahoma's Denver office, with an index
46503 and a sheet explaining some of the letters, figures and abbreviations. This book covers rates for the State of Oklahoma. The traffic department makes up a separate book for each state. He did not participate in any way in the preparation of this freight rate book. It was prepared in Denver.

*Examination on Voir Dire by Mr. MacIntyre.*

Q. Can you tell us, Mr. Thompson, whether Respondents' Exhibit, for identification, 3578-A to Z-67 was prepared by the traffic manager of the Ideal group of companies, Mr. Martindell?

A. Was it prepared by Mr. Martindell?

Q. Yes, or under his supervision.

A. Now, let's see. He has not been with our company for quite some time. I don't remember just when
46504 he left the company. This was in 1933. I believe he was traffic manager then.

Q. Do you know whether or not he prepared that book?

A. He prepared the book.

Q. In his office?

A. Yes.

Q. You do not know just how he went about preparing it; you got it from his office after it was prepared?

A. No.

Mr. Brick: I object to the question, if Your Honor please. I have offered it, as I thought was quite obvious, on the basis of this man's two companies using this particular book, and he testified that he did not have anything to do with making it up.

Mr. MacIntyre: Yes; but we would like to find out who did make it up.

Trial Examiner Norwood: Objection overruled.

By Mr. MacIntyre:

Q. I say, you do not know just how he went about preparing it and what he used in connection with the rates that he put into the book?

A. No; I don't know just exactly what he did. He has a complete traffic file and everything like that. I have been in his office, I will say that; that is all I can tell you about what he did. Just from the looks of it and from my own experience in looking at railroad tariffs, it looks
46505 like it is made up in station order, just like he would take it out of a tariff. It is not alphabetical or anything else.

Q. Well, looking at page 27 of this book, when you received that from your Denver office, irrespective of who made it up and how it was prepared, how do you use and in what manner have you used in connection with the conduct of your business, that is quoting and selling cement, the information that appears on that page under the columns "DAL," "FW," "STL," "KC," "GAS," "BIR," "SPO," "MAR," "SUP," how would you use that information in connection with your business?

Mr. Brick: I object to the question, if Your Honor please. I submit that that is cross-examination. The witness has said that he uses these books, and I should think that that would be sufficient for the purpose of Your Honor having information as to whether it is admissible or not admissible.

Trial Examiner Norwood: Well, I think how he uses it bears on the subject.

Let him answer.

Mr. Brick: I think it bears on it so far as the cross-examination is concerned, but has nothing to do with its admissibility. The fact that he uses it is sufficient. Whether he uses it properly or improperly—

Trial Examiner Norwood: The objection is overruled.

Mr. Brick: —is something that can be brought
46506 out on cross.

Mr. MacIntyre: If used in a relevant manner.

Trial Examiner Norwood: Go ahead.

The objection is overruled.

Answer the question.

A. We take this book and transfer these freight rates into an alphabetically-arranged list, so you can handily use it. It will take you some little bit to look this up the way it is arranged here in station order.

By Mr. MacIntyre:

Q. Let us go back to the page I called to your attention there.

A. What was it.

Q. And the information I called to your attention.

A. I lost the page. What was it?

Mr. MacIntyre: Will you go back there, Mr. Reporter, please, and read my question to the witness.

(Question read.)

A. We check that against rates shown in our destination price book.

By Mr. MacIntyre:

Q. Have you ever used that in connection with shipping cement?

A. In shipping cement?

Q. From your plants.

46507 A. Well, the shipping is not done from my office.

Q. Well, how have you ever used that information in connection with shipping?

A. We use it. Here is the information over here that would pertain only to our own rates. Here is the routing instructions in the book, too, see.

Q. I know, Mr. Thompson, but I am going back to the information I have asked you about. Do you use that information in connection with shipping cement?

A. Oh, yes.

Q. The information I asked you about on page 27 under those columns?

Mr. Brick: He said "yes."

A. I don't know whether you included Oklahoma, Ada, in that or not. If we did not you would not use—

Q. What do you use it for?

A. Except from our own plant.

Q. If you did not use it for shipping purposes, what do you use that for, Mr. Thompson?

A. Those freight rates?

Q. How do you use it, yes.

A. We use it in setting up destination prices.

Mr. MacIntyre: We object to the offer as unduly cumulative.

Trial Examiner Norwood: The objection is overruled.

46508 It is received as marked.

(RESP. EX. 3578-A to 3578-Z-67, was offered and received in evidence.)

By Mr. Brick:

Q. Do you from time to time, Mr. Thompson, receive supplements to these freight rate books?

A. Yes.

Q. Do those supplements cover changes in tariff rates?

A. Yes.

Q. And other changes which might affect the rates?

A. Yes.

Q. Do you or do you not find the freight rate books which you use satisfactory for general use in connection with analyzing prices and making shipments?

A. Yes.

Trial Examiner Norwood: Now, do you use that book in making prices at all?

The Witness: Well, yes, I would say we do, Judge. We take those rates and transfer them into a book that is arranged for quicker and easier handling.

Trial Examiner Norwood: I mean, do you make any prices?

The Witness: I do not know what you mean by "make."

Trial Examiner Norwood: Yes.

46509 The Witness: We make out price lists and send them out.

Trial Examiner Norwood: Yes, but do you use it in originating price?

The Witness: In originating a price?

Trial Examiner Norwood: Yes.

The Witness: No, I would not say that we did.

Mr. Brick: I might clear that a little, Judge. He testified that neither of his mills have had bases.

Trial Examiner Norwood: Well, I was not sure. I wanted to clarify that.

By Mr. Brick:

Q. Will you describe the type of book which you make up alphabetically by destinations, and which you have testified you use in connection with running down the price?

A. Well, yes, it is a loose-leaf book, it has the stations in alphabetical order, to the right—to the left side of the page—and columns on the right for the freight rates and places to insert records of the destination quotations we make from time to time.

Q. In the absence of a freight rate book, would you be able to meet price changes promptly?

46510 A. No. It would be quite a tedious task. We could, of course, refer to the freight tariff, but it would take—

Q. Well, would the time which would be required for reference to freight tariffs prevent you meeting prices promptly?

A. Yes, I would say so, yes.

Q. In converting the rates, Mr. Thompson, from the hundredweight figure to the unit barrel figure, do you use a conversion table?

A. Yes.

Q. Is that included in the book?

A. No.

Q. That is in the freight rate books?

A. No.

Q. It is your practice, is it not, to convert from hundredweight into the unit barrel weight?

A. Yes, we quote per barrel.

Q. And how long have you been doing that?

A. Well, at Ada ever since we started.

That goes back to when?

A. Around 1908, they were doing it before I got there, and that was in May, 1908. I think they had been shipping since January 1, of the same year.

Q. Did the Oklahoma Company have any compilation of rates when you first became associated with it in 1908?

46511 A. Yes, they had a price book, there were some price books that were partially completed, freight books.

Q. And did they contain the freight rates in the sales area of that mill?

A. Some of them.

Q. Did you have anything to do with the compilation at that time?

A. I helped finish the books under the direction of our attorney, who was preparing them by himself at the time. It was a pretty slow job.

Q. Was that in 1908?

A. Yes, sir.

Q. How did you go about the compilation work you did in connection with the freight rates?

A. We would take the freight rates out of the tariff, the lowest rate, and put them in our handy reference rate book.

Q. What points did you use as headline points in connection with those compilations, Mr. Thompson?

A. We had all the manufacturing points in quite a large area around our plant—I mean cement manufacturing points.

Q. How long did it take you to prepare that compilation of freight rates in 1908?

46512 A. As I remember, Mr. Hart had been working on the books for several months, and it took us several months more to complete it—that is, complete the books for the different States. I believe we made Oklahoma first, and then Texas and Arkansas, and later Louisiana and Kansas.

Q. What destinations did you have in those compilations?

A. We had picked out most of the places where we thought would be dealer towns. That cut down the work some.

Q. Have you any knowledge as to what proportion of the total number of railroad stations in a given State were included in your compilation?

A. About half of them, a little better than half that were in the tariff, freight tariff.

46513 Q. Now, were those rates carried in cents per hundredweight?

A. In the tariff or in the rate book we made up?

Q. The book you made up.

A. In cents per hundredweight.

Q. How did you convert it to cents per barrel?

A. We made up a conversion table for convenience, and, of course, we used 380 pounds to the barrel and multiplied the rate per hundred by the weight and arrived at the figure in that way.

Q. What did you do with your fractions?

A. We dropped fractions of less than a half, and figured fractions of a half and over as the next whole number.

Q. Has the Oklahoma or the Arkansas Company ever used freight rate books published by The Cement Institute?

Mr. MacIntyre: Now, just a minute.

I object. The witness has clearly shown, through testimony on voir dire, the manner in which Respondents' Exhibit 3578-A to Z-67 was made up. He does not know just how it was made up. He is using that book. How can he now testify that he is not using material which The Ce-

ment Institute furnished to Mr. Martindell, the general freight manager, from whom he received this? It is just confusing and misleading to have him testify that he personally does not use it.

46514 Trial Examiner Norwood: The objection is overruled.

Go ahead.

A. No.

By Mr. Brick:

Q. For how long, Mr. Thompson, have you been receiving freight rate information in the form of Respondents' Exhibit 3578-A to Z-67?

A. Well, our company changed ownership in 1917 or 1918, and at that time we began receiving, or shortly thereafter, the rate books of the Denver traffic department.

Q. And since that time—

46515 A. That is about as close as I could come to that.

Q. Since that time, about 1917 or 1918, has there been any change in the form or nature of the information which the Denver office has sent you?

A. Do you mean in the book?

Q. Yes, sir.

A. It is the same book we have always had.

Q. And all you have received, I take it, subsequent to that time, would be supplements changing rates which had been amended in tariffs; is that correct?

A. Yes, sir.

46516 Q. I show you Respondents' Exhibit 158, and ask you if you wrote that letter?

A. I suppose so, Mr. Brick.

46517 Q. Well, I suggest you read it for the purpose of letting us know whether or not you wrote it.

A. (After examination of the letter.) Yes; I should say I wrote that letter.

Q. On what basis did you make the suggestions appearing in the document I have just shown you, Mr. Thompson?

A. I made them at the request of Mr. Alexander.

46519 Q. At any time subsequent to the date of that letter, did you make use of any Cement Institute freight rate books?

A. No; I have never even seen one.

Q. Do I understand your testimony correctly to be to the effect that ever snce The Cement Institute freght rate

books have been available, you have been using the freight rate books furnished by your Denver office?

A. Yes.

Q. Do you know whether or not at the time you wrote Respondents' Exhibit 158-L the Oklahoma Cement Company was a member of The Cement Institute?

A. That was the Code period, wasn't it—December, 1933?

Q. Yes.

A. I suppose we were. I am pretty sure of it.

Q. In that document, Mr. Thompson, you suggest to Mr. Alexander the inclusion of additional headline points. On what basis did you believe that those headline points should also be included in The Cement Institute freight rate books?

A. Why, I listed all the points where cement was manufactured or shipped into these States on this list.

46520 Q. Going back for a minute, Mr. Thompson, in connection with the freight rate books you assisted in compiling in 1908, how did you select the headline points which were included in those freight rate compilations?

A. I believe Mr. Hart selected the headline points, but, as I recall, they were all the manufacturing points within quite a radius of our plant. The book was partially completed when I went to work on it.

Q. Well, do you know whether or not the books did include all of the manufacturing points form which cement was shipped in the sales area of the Oklahoma Company?

A. All the points were listed that were shipping into the territory that this new plant was trying to market in, it was trying to enter. We had been shipping cement for only four months.

Q. For how long did you use those books which were originally made up in 1908?

A. Well, we used the same style of book, re-issued it and corrected it from time to time, up until the company changed ownership. When that took place then we used the books that were furnished by the traffic department of the new owners out of Denver.

Q. That was in 1917 or 1918?

A. We used those ever since.

46522 Mr. Withrow: We are offering to substitute this exhibit, and I will ask that it be marked for identification "Respondents' Exhibit 3545-A and B."

(The document was marked for identification "Respondents' Exhibit 3545-A and 3545-B.")

Mr. Withrow: I might say that this, Respond-
46523 ents' Exhibit 3545-A and B, is substituted for Respondents' Exhibit 3545. The old exhibit was Respondents' Exhibit 3545, and we are substituting for that Respondents' Exhibit 3545-A and B.

And this exhibit, which I will ask to have marked the same number, is to be substituted for Respondents' Exhibit 3546.

(The document was marked for identification "Respondents' Exhibit 3546.")

Mr. Withrow: Counsel for the Commission have the other documents right here, and I will ask that the substitution be made.

Mr. MacIntyre: May we see the substitutes?

(The exhibits were handed to Mr. MacIntyre.)

Trial Examiner Norwood: Let the record show that the substitutions have been made.

(The said Exhibits 3545-A and 3545-B and 3546 were substituted for the old Respondents' Exhibits 3545 and 3546.)

J. A. POHLING thereupon was recalled as a witness
46524 for the Respondents, and, having been previously sworn, testified further as follows:

*Direct Examination by Mr. Withrow.*

Q. Mr. Pohling, I will show you record page 46397 and show you your answer there to the third question on the page, the question starting on line 11, and ask you if that is the answer which you gave on the witness stand, and, if not, tell us how the answer should read.

A. This is the answer I gave.

Q. Is it complete in that form?

A. No, sir. I would like to add that particular color we referred to, yellow, appears only beneath the zero line on that chart, which means that I never in my study found those prices being the highest invoice prices during that survey.

46525 (RESP. EXS. 3545-A and 3545-B, and 2546, were offered and received in evidence.)

P. A. THOMPSON thereupon resumed the stand and testified further as follows:

*Direct Examination (Continued) by Mr. Brick.*

Q. Mr. Thompson, do you quote prices with respect to Government business in any manner which is different from that which you follow in connection with commercial business?

A. Yes.

Q. What are those differences?

A. Well, we quote the Government both f. o. b. destination and f. o. b. mill.

Q. Did you quote f. o. b. mill to the Federal Government prior to July, 1937?

A. I believe we did occasionally, not very often, though.

Q. Prior to July, 1937, did the Federal Government make any request for f. o. b. mill bids only?

46526 A. You mean on the invitation to bid?

Q. Yes, sir.

A. I don't know that I recall an invitation which was only f. o. b. mill. We usually got them f. o. b. destination only or alternate, f. o. b. destination or f. o. b. mill or you might say "and f. o. b. mill."

Q. And how did you make up the prices which you bid in connection with Government bids?

A. Well, we made up the destination prices either with a control clause to give the Government the benefit of the land-grant rate, or f. o. b. mill with the land-grant rate deducted from the destination price.

Q. Do you recall a request by the Government for bids in April, 1938, on which the Government requested f. o. b. mill bids and other conditions?

A. When?

Q. April, 1938.

A. We received an invitation about that time to bid on kind of a zone basis as well as we could figure out.

Q. Did you make a bid pursuant to that invitation?

A. No.

Q. Why did you not?

A. Well, we did not think it was anything more than an option. We were not offered any definite amount of cement or any definite time for delivery, or maybe they would not order it at all.

46527 Q. And that called for f. o. b. mill bids, did it not, with respect to the various zones that were involved?

A. Yes, as I recall they asked for f. o. b. mill, and without saying where the cement might go, but they could give it to you over in this zone or over in that zone, or maybe not give it to you at all.

Q. Prior or subsequent to that time did you receive any other invitations from the Government requesting f. o. b. mill bids?

A. Of that particular form, similar to that?

Q. No. Directing your attention merely to the f. o. b. mill character of the invitation without the zone.

A. Oh, we may have occasionally received them; I do not remember.

Q. Do you recall having made any bids that were f. o. b. mill to the Federal Government prior or subsequent to that April, 1938, invitation?

46528 A. I do not recall any specific instances. I might add that in our territory most of the invitations we receive from the Government are from those small agencies, like the Indian Agencies, and most of those were just f. o. b. destination. I was trying to recollect if there was one or two up and down the river that we might have bid on from Arkansas. There might have been an occasion or two over there.

By Mr. Brick:

Q. There were requests for f. o. b. mill bids?

A. Perhaps so, in conjunction with an alternate you could bid either, or, or both ways.

Q. And did you comply with those conditions by submitting f. o. b. mill bids?

Mr. MacIntyre: Now, I object as to whether he complied with the invitation or not. One way of determining that is by having the bid, or by asking the witness to testify what he did, and let the courts determine whether he complied or not.

Trial Examiner Norwood: Well, yes, but I think you may go into and get the process—but I will ask this witness to just give us the information that he has definitely in mind.

46529 I will overrule the objection.

In other words, do not tell us what you did pursuant to bids that you are not quite sure you got.

A. Well, I do not recollect for sure whether we received invitations only f. o. b. mill prior to that date or not, for sure.

By Mr. Brick:

Q. Mr. Thompson, do you recall any occasion with the exception of that April, 1938, letting, or invitation, which we discussed,—any occasion on which the Government requested f. o. b. mill bids, and you did not respond by giving f. o. b. mill bids?

A. No, I do not recall anything of that.

Q. Approximately what proportion of your total sales are made to the governmental agencies?

A. I would say a very small fraction of a percent. I mean by that, less than one percent.

46530 Q. Are there any land-grant rates from Ada or from O. K. Junction?

A. There are certain destinations that we could ship from those mills that would move over a railroad that has land-grant deductions, yes.

Q. And in what area would those points be located?

A. Well, we could ship into Kansas and in Arkansas or Missouri, up and down the river, probably, to some places it would be land grant. As I recall, it is two lines of land-grant railroads through Arkansas, one kind of northeast and southwest, and the other east and west, through the State, and there is quite a little—not quit a little—there is very little land-grant mileage in Kansas, some on the Santa Fe and Katy, I believe. There is no land-grant mileage in Oklahoma or Texas, and I believe in Louisiana there is the V. S. & P., from Shreveport, the old V. S. & P. from Shreveport east on the land-grant mileage.

46532 "Q. Mr. Thompson, you stated that you endeavored to give the Government the benefit of land-grant rates whenever such rates were involved in shipments from your mills. Now, will you state to us—")

Q. —whatever action either of your companies has taken in order to carry out that purpose?

A. Well, we would determine one bid by taking into consideration the land-grant rates, whether they were to apply from our mill or a competitor might have a land-grant rate that would affect us in determining the price. After all, they are just special rates.

Trial Examiner Norwood: You mean you based your

bid, then, your delivered cost or delivered price bid on land-grant rates where they obtained; is that right?

The Witness: Yes.

Trial Examiner Norwood: And then permitted the Government to deduct the land-grant rate in order to determine the f. o. b. price?

46533 The Witness: No, I would not say that it was just that way in all cases.

If we bid a destination cost price to the Government the control clause would have the effect of doing that, but if we just bid a flat f. o. b. mill price, why, we would determine that mill price in our own minds in order to give the Government the benefit of those rates.

In other words, if we did not do that we might not have a bid low enough to get the business.

Trial Examiner Norwood: You made a derived f. o. b. mill?

The Witness: Yes; that is right.

Trial Examiner Norwood: Go ahead. Proceed.

By Mr. Brick:

Q. Have you given f. o. b. mill bids to the Government without any reference to the control clause prior to April, 1938?

A. Prior to April, 1938, I would not say that we had. I think that that is quite recently that we bid just flat f. o. b. mill. We have been using that control clause for some little bit, I believe.

Q. In the cases where you bid f. o. b. mill, did you or did you not find that the destination costs as figured by the awarding officer were identical with respect to your bid as compared with bids of your competitors?

46534 A. That is, without the control clause?

Q. Yes, sir.

A. Why, no, we did not find that the bids were identical.

Q. Who in your company, Mr. Thompson, secures the land-grant rate information which you use in connection with making up bids were land-grant rates might be involved in the shipment?

A. I secure it part of the time; part of the time the chief clerk.

Q. And where do you obtain it?

A. Well, we obtain it from several sources.

Q. Will you name them, please?

A. We can obtain it from the railroads, or our traffic department, or the best information is from Government tabulations to those on previous bids.

Q. That is the tabulation of Government bids covering the same?

A. That is where we bid formerly on Government requirements.

Q. I see.

A. In other words, the information that we get does not always check up with the way the Government figures the land-grant rates; rarely does.

Q. Have you at any time consulted with any of
46535 your competitors with regard to land-grant rate information?

A. No.

Q. Have you ever agreed with any of your competitors with respect to what land-grant rates you or any of your competitors might use in connection with Government business?

A. No.

Q. Now, you mentioned that you have used the so-called control clause. Under what circumstances did you first use that clause in connection with your bidding?

A. As I recollect, it was filed with the Code Authority. I do not remember the exact date, it was just about the time the Code became effective, 1933, I think along in—late in the year.

Q. Do you know who filed it?

A. Do you mean—

Q. What company?

A. Oh, no, I do not recall.

Q. Why did you adopt the use of that clause, Mr. Thompson?

A. In order to bid competitively on Government requirements.

Q. Did you adopt or follow the practice of using the control clause as the result of any understanding or agreement that you had with any of your competitors?

A. No.

Q. Has your testimony on this subject of Federal—that is, bids to the Federal Government, been appli-
46536 cable to both the Arkansas and Oklahoma Companies?

A. Yes.

Q. Now, have you ever had any of your customers request prices f. o. b. mill other than that reference you made to the April, 1938, invitation of the Procurement Division?

A. Well, occasionally we get a request from the railroads to bid f. o. b. the mill.

Q. Do you have any requests from any other sources?

A. Not to—no.

Q. Have you ever had any agreement or understanding with any of your competitors that you would not bid f. o. b. mill in connection with any transactions?

A. No.

Q. Did ~~you~~ personally, Mr. Thompson, make the decision for you rcompany or companies in connection with not bidding on the April, 1938, letting?

A. No.

Q. How was that taken up?

A. We had a conference with our people in Denver.

Q. And who made the decision, if anybody?

A. The decision was made in the conference.

Q. Did any particular individual make the decision?

A. No, sir.

Q. Who attended the conference?

A. Well, I believe Mr. R. J. Morse was there,
46537 the general manager, and Mr. Warner, sales manager of the Colorado Company, and Mr. Hoenig, sales manager of the Nebraska Company, and myself. Mr. Boettcher was in Denver, and I don't think he was in that conference.

Q. Were they all representatives of the companies associated with the Ideal group?

A. I beg your pardon?

Q. Was each of those individuals associated at the time with companies in the Ideal group?

A. Yes.

Q. At that time did you know what any other manufacturers were going to do with respect to that invitation?

A. No.

Q. Did you consult with any other manufacturer?

A. No.

Q. Now, has either the Oklahoma Company or the Arkansas Company published any announcements of policy to the trade with regard to the classification of customers?

A. Yes; I think we sent out an announcement for each company.

Q. Do you recall when such an announcement was first published by the Oklahoma Company?

A. I believe it was in the early part of 1935.

Q. And how about the Arkansas Company?

A. About the same time.

Q. Do you recall Article XI of the N. R. A. Code
46538 that had to do with sales to customers?

A. Marketing section?

Q. Yes.

A. I believe that is it; yes, sir.

Q. Did both of your companies sell in accordance with that article while it was in effect?

A. Yes, we tried to.

Q. How did the classifications specified under Article XI compare with the general practices and policies which were in effect as far as your companies were concerned, prior to the Code?

A. It was just about the way we had been selling cement for years.

Q. For how long had you been selling in substantially that way?

A. Oh, I would say we had been selling that way almost ever since the beginning, except I recall that in the early days we did not have highway paving like we had later, and when we first came into existence we marketed that through local dealers instead of selling it direct to contractors, as we do now, and I believe by the time the Arkansas plant was in production we were selling contractors direct; so that Arkansas would be just about the same as Oklahoma. I suppose there was that difference, and there might be some other little differences, but it was just about the same.

46539 Q. Did either of your companies initiate the policy of selling direct to paving contractors?

A. No.

Q. With one of your competitors selling direct to paving contractors, would you be able to sell through dealers on equal terms with such competitors as were doing so?

A. No. That is why we changed. We had to compete in that class of business—either that or forego the business.

By Mr. Brick:

Q. Do you recall that Article XI was suspended in the early part of 1934?

A. Well, I think it was suspended. It was shortly after the Code came into existence.

Q. What changes, if any, were made in the marketing policies of your companies subsequent to its suspension?

A. We just went along, like we did before.

Q. Did you have any agreement or understanding with any of your competitors concerning the continuation of any of the provisions and conditions of Article XI of the N.R.A. Code?

A. No, sir.

Q. Do you recall issuing marketing policies on behalf of your two companies to the trade in the spring of 1935?

A. When?

46540 Q. In the spring of 1935.

A. Yes; yes, I do.

Q. I show you a copy of Commission's Exhibit 873-M, and ask you if that is a policy concerning marketing conditions which you circulated among your customers (handing document to the witness)?

A. That is for the Arkansas Company, I believe, yes. It was sent out in circular letter form.

Q. Was it sent out about the time of the date appearing on that paper?

A. Yes; I think it was. I believe the Oklahoma Company was sent out a little ahead of this.

Q. I show you Commission's Exhibit, for identification, 737-TT, and ask you if that is a marketing policy circulated by the Oklahoma Company as of about the time of the date appearing on the paper (handing document to witness)?

A. Yes, sir.

46541 (RESP. EX. 3579 was offered and received in evidence.)

By Mr. Brick:

Q. Under what circumstances, Mr. Thompson, were these policies initiated by your company? I am referring to Commission's Exhibit 873-M and Respondents' Exhibit 3579.

A. To meet a competitive condition.

Q. And what was that competitive condition?

46542 A. Our competitors had sent out an announcement to the trade generally in the territory we served, to the dealers, and we were beginning to get inquiries from our dealers wanting to know what we were

going to do about the same policy; so we decided we had better send out a circular letter and say what we were going to do.

Q. Were these policies which were issued by your two companies the result of any understanding or agreement with any of your competitors?

A. No, sir.

Q. I show you Commission's Exhibit 737-WW, which appears to be a copy of a letter written by you. Will you kindly read it and state whether or not you did write any such letter (handing document to the witness)?

A. I believe I did. Yes, I am quite sure of it.

Q. Do you recall the occasion for having written that letter?

A. Yes.

Q. Will you state it, please?

46543 A. The letter is addressed to Mr. Woods, and Mr. Woods was secretary of the Southwestern Lumbermen's Association. I believe that is the correct style of the association. He had called at my office at about the time that this policy circular letter had been sent out to the dealers, and wanted to discuss the matter with me; so I, of course, had him to sit down, and we talked about it for some little bit. There was nothing, as far as that goes, that we cared to discuss with Mr. Woods particularly. We had already sent out the letter, but it was just one of those cases of being courteous.

Q. Now I show you Commission's Exhibit, for identification, No. 737-UU and VV, and ask you if you remember having received those communications from Mr. Woods (handing documents to the witness)?

A. Yes, I received that letter from him. It is not properly addressed, but I think I got it. I am pretty sure I did (handing the documents to Mr. MacIntyre).

Mr. Brick: I am going to offer that in a minute, Mr. MacIntyre. Let me finish with this.

Q. Does Commission's Exhibit, for identification, 737-UU and VV constitute a communication to which Commission's Exhibit 737-WW is a reply (handing a document to the witness)?

A. Yes; the letter dated the 12th is a reply to the letter of the 11th.

Mr. Brick: I offer in evidence Commission's Ex-
46544 hibit, 737-UU and VV (handing the document to Mr. MacIntyre).

Mr. MacIntyre: We offer no objection to this if it is offered as a Respondents' exhibit. We are taking no responsibility for it as a Commission's exhibit, however.

Q. Is it your practice, Mr. Thompson, to consult with Mr. Woods in connection with any changes you make or contemplate in your marketing policies?

A. No; we prefer to deal with our customers rather than some secretary of a large body. That does not necessarily mean a thing to us.

Q. Nor do you consult with dealers or dealer associations on matters of that character?

A. No. I meant by that that if we have any
46545 problems with our dealers, we talk with them individually. Just because dealers belong to some organization, that does not necessarily mean to us that they are of the same mind at all.

Q. Well, do you receive many inquiries from dealers or lumbermen's associations?

A. I would not say a great many. We get letters occasionally.

Q. How do you treat those matters when they are brought to your attention?

A. As a rule, we don't pay any attention to them.

Q. Will you give us whatever facts you might have in mind, Mr. Thompson, relating to the attitude of
46546 your customers concerning these announcements which you sent out?

A. Well, I stated, I believe, a few moments ago, that our competitors had sent out announcements to the dealers, and we had inquiries from our dealer customers wanting to know what we were going to do about it, and we decided to send out circular letters giving marketing conditions, and did, and I don't recall receiving any unfavorable comment.

Q. As far as you personally were concerned, did you consider that the policies worked satisfactorily?

A. Worked satisfactorily?

Q. Yes.

A. I considered the matter taken care of, temporarily at least.

Q. Now, I show you Commission's Exhibit 873-I, and ask you if that is a statement of marketing policy distributed by the Arkansas Company to its dealer trade on or about April 10, 1935 (handing a document to the witness)?

Q. Do you recall whether or not the Oklahoma Company issued a new policy at or about the same time?

A. Yes; we had the same policy for both places.

46547 The witness identified Resp. Ex. 3581 as the Oklahoma policy dated April 10, 1935, to which he referred.

(RESP. EX. 3581 was offered and received in evidence.)

By Mr. Brick:

Q. Under what circumstances were these latter policies issued? I refer, Mr. Thompson, to the policies issued by both the Arkansas Company and the Oklahoma Company, under date of April 10, 1935?

A. They were brought about by competitive announcements of policy, the same as the others.

46548 Q. Will you state to us, Mr. Thompson, the reasons underlying your decision to follow changes in policy announced by your competitors immediately prior to April 10, 1935?

46549 A. To meet changed marketing conditions.

Q. Why was it necessary for you to meet those changes?

The Witness: We met them because our competitors, or some of them, had come out with announcements that it would be more favorable to the dealer trade, and we wanted to protect our own situation by meeting it.

Trial Examiner Norwood: That is, you considered that they were more favorable to the dealer trade?

The Witness: That is right.

Trial Examiner Norwood: And you felt you had to meet it; is that right?

The Witness: They were just as much a part of the cement transaction as the price.

46551 By Mr. Brick:

Q. The policies just referred to by Mr. MacIntyre show that you did not adopt those provisions which have been circulated by your competitors, and will you state for the record why you did not adopt them?

46552 A. Why we did not sell counties direct?

A. Why, the business was of no consequence. We decided not to pay any attention to that part of it. Counties do not buy much cement—I mean, in our marketing area, if any.

Q. In connection with the cement which is purshased by counties, is dealer service required or not required?

A. Dealer service is required as a rule, small culverts and work of that nature, less-than-carload business I should say as a rule.

46553 Q. Mr. Thompson, did either of your companies issue any of these dealer policies which we have referred to as the result of any agreement or understanding with any of your competitors, dealers, or any other dealer or lumbermen's associations?

A. No, sir.

46554 Q. What is your reason, Mr. Thompson, for selling emergency relief work through dealers rather than directly?

A. It is a class of business that requires dealer service, small jobs, quite frequently delivery is asked for at the job site. We are not prepared to make delivery at the job site, small lots.

46559 Q. Mr. Thompson, I show you Commission's Exhibit 816-D, which is apparently a typewritten copy of a letter carrying your name, and I ask you, do you recall having written any such letter?

A. Yes, I dictated this letter.

Q. And what is the date of that, please?

A. July 25, 1935.

46560 Q. Now, I will show you Respondent's Exhibit, for identification, 3582, and ask you if that was the communication to which Commission's Exhibit 816-D is a reply?

A. Yes.

(RESP. EX. 3582 was offered and received in evidence.)

By Mr. Brick:

Q. Have you ever had any agreement or understanding, Mr. Thompson, with any of your competitors, dealers, or any dealer or lumbermen's associations concerning how you would sell on emergency relief work; that is, direct or through dealers?

A. No.

Q. Have you ever authorized any of your salesmen to furnish State procurement officers with any lists of approved dealers to whom P.W.A. invitations should be sent?

A. No.

46561 Q. Now, have you ever supplied your salesmen with any such lists of dealers?

A. We supplied our salesmen with a list of dealers in his own territory. That is as far as we go with that individual man.

Trial Examiner Norwood: Well, you mean by "list of dealers," a list of your customers or prospective customers?

The Witness: I mean a list of the local dealers that are in towns in the territory where he makes his regular calls. In other words, Judge, if we have two men in a State we will have a definite section assigned to each one, so that we may keep them within bounds.

By Mr. Brick:

Q. How do you compile such lists of dealers and

46562 keep them up to date?

A. Well, we keep them up to date by our salesmen reporting back of any changes, new concerns going into business, old firms closing out, and so forth. Our salesmen send in a daily report of their day's work, a report on each dealer they call on.

Q. Have you ever exchanged any dealer lists with your competitors?

A. No.

Trial Examiner Norwood: Do you make up your dealer lists from these lists of the members of these dealer organizations?

The Witness: No, Judge. It would be hard to say. We have dealer lists so long, it would be hard to say just how we started off originally. Back some years ago we had to have some basis for starting it, and at that time I was not sales manager of the company. I don't remember whether we started in and had the man we first sent around to report from town to town as they started out, whether they took a list from Dun & Bradstreet, or some other list of material dealers. How we keep it in existence and going is by checking these reports from day to day. It is quite important to us to know.

46563 By Mr. Brick:

Q. How long, Mr. Thompson, have you had such lists?

A. Well, ever since we have been in business.

Q. Has it ever been any concern of yours as to whether or not State Procurement officers sent invitations to bid to any particular dealers?

A. We would be very much concerned to know that our

dealers received the invitations to bid. I mean by "our dealers," the ones that handle our cement.

Q. Why is that, Mr. Thompson?

A. We would like to make the sale in case our dealers should secure an award, and if he does not receive an invitation he won't get the award.

Q. When you speak of "our dealers," do you refer to the dealers who sell the Oklahoma and Arkansas brands of cement?

A. Yes.

Q. Have you ever received requests for shipments from sources to which you do not usually sell the product direct?

A. Yes; we receive inquiries of that nature continually.

Q. And what do you do in cases of that kind?

A. Well, sometimes we will do one thing and sometimes another. Usually, a good many of those reports come from contractors that are bidding or making estimates or preparing to bid on different jobs through a given territory, and they will ask us not only to get the cement
46564 prices from the dealers, but to find out what the sand and gravel costs are, and sometimes to take a picture of the building site; and then we receive inquiries from what we might term local consumers in the dealer town. In that case we would probably refer that inquiry to the local dealer, and we usually follow that up by having our salesmen get around.

Q. Have you ever had any agreement or understanding with any of your competitors or with dealer or lumbermen's associations as to what dealers you would or would not recognize?

A. No.

The capacity of the Arkansas Plant it approximately 1,100,000 barrels. There are two plants, the wet plant and the dry process plant. I should say the wet plant was 1,500,000 capacity, and the dry process 800,000. In the Arkansas plant they either run or they don't run. It is a one kiln plant, and we run it depending upon what sales we can make. The other plants are unit plants. We can regulate the operating ratio to correspond with the volume of business that we are able to obtain. The Arkan-
46565 sas plant was built in 1928 or 1929, I believe, put in operation, and the capacity of that plant has been increased almost double since it was put in operation. The

Arkansas plant was increased shortly after it was put in operation. That was about two or three years after the plant was opened up—1928. I am just trying to think for sure whether it was 1928 or 1929 that we began manufacturing cement. It was in September of one of those years. The original capacity of the plant was about 1,500 barrels a day. On an annual estimate that would be just about half the amount I mention; annually about 500,000 barrels or 550,000.

About the Ada plant, when that company changed management, a few years after that took place, this net wet process plant was built.

We have seasonal variation with regard to shipments.

46566 The witness identified Resp. Ex. 3583 as a list of shipments for the Arkansas Plant beginning with September 1929, through 1939 and Resp. Ex. 3584 as a list of shipments of the Oklahoma Plant beginning with January 1927, through 1939. Both statements show the shipments by months. The figures were prepared under the witness' supervision or direction, and he can vouch for the accuracy, or the substantial accuracy, of those figures. There have been occasions when the witness' plants have operated at maximum capacity.

46569 (The documents heretofore marked for identification RESP. EXS. 3583 and 3584, were received in evidence.)

By Mr. Brick:

Q. Mr. Thompson, are the Arkansas and Oklahoma Companies members of The Cement Institute?

A. At the present time?

Q. Well, I will say yes, and then explain, if you can, when they have been or when they have not been.

A. Well, I think we are still members of the Institute for those two companies.

Q. Did you become members when the Institute was first organized?

A. Well, I don't know when it was first organized, Mr. Brick. As I recall, we became members of The Cement Institute about the time of the N.R.A. Code.

46570 Q. Has there been any occasion within your
46571 knowledge, Mr. Thompson, that The Cement Institute participated in or had anything to do with the

formulation of any of the policies of either of your companies?

A. No.

*Cross-Examination by Mr. MacIntyre.*

Q. On this last question, Mr. Thompson, I would like to ask you whether or not Mr. Charles Boettcher is president and has been for many years of the Arkansas and Oklahoma Companies?

A. Yes.

46579 Q. What is your answer?

A. Mr. Charles Boettcher has been president of the Arkansas Portland Cement Company since it was organized, I believe it was in 1928.

Q. What about the Oklahoma Company?

A. He has been president of the Oklahoma Company since the company changed management. It was either in 1917 or 1918, I do not remember exactly which year.

Q. Are you prepared to say now, Mr. Thompson, that when Mr. Charles Boettcher served as a trustee of The Cement Institute and attended its meetings as such and otherwise that he did not represent at that time the interests of the companies of which he was president?

46580 A. I am not prepared to say that he was either a trustee or attended any meetings of the Institute.

Q. How, then, are you prepared to testify as you did just at the close of your direct examination in response to Mr. Brick's questions that The Cement Institute had nothing to do whatever with the interests of the Arkansas and the Oklahoma Portland Cement Companies?

46581 A. I believe I testified, Mr. MacIntyre, that The Cement Institute had nothing to do with the formulation of the sales policies of either the Oklahoma or the Arkansas Cement Companies.

Q. And you say that, Mr. Thompson, despite the fact that Mr. Boettcher, the president of your two companies, attended meetings of The Cement Institute and sometimes as trustee of The Cement Institute, at which time discussions of sales policies took place?

Trial Examiner Norwood: Well, if you knew that state of affairs to be a fact, would it change your testi-

46582 mony as to the policies being influenced?

The Witness: Well, Judge, I can answer this by

saying if Mr. Boettcher was a trustee of the Institute or attended meetings I have never been informed about that.

Trial Examiner Norwood: But I say, if that were a fact would that change?—

The Witness: No.

Trial Examiner Norwood: —your statement here as to the influences on your selling policies?

The Witness: Not a bit. In other words, I mean by that Mr. Boettcher left the sales policies of these two companies up to the local management.

By Mr. MacIntyre:

Q. And you are not prepared at this time to testify to what extent the discussions and participation of Mr. Boettcher in those discussions of The Cement Institute had upon him as a man, or upon his activities?

Mr. Brick: I object to that.

Q. I say, you cannot testify to that?

Trial Examiner Norwood: Overruled.

Q. Can you?

Trial Examiner Norwood: Answer the question.

Mr. Brick: May the question be read, Judge, please.

(Question read.)

By Mr. MacIntyre:

46583 Q. Now, what is the answer, Mr. Thompson?

Trial Examiner Norwood: Off the record.

(Short discussion off the record.)

Trial Examiner Norwood: On the record.

By Mr. MacIntyre:

Q. What is the answer, Mr. Thompson?

A. I know nothing about it.

Q. You do not know what effect, if any, it had upon Mr. Boettcher?

A. I do not know whether he was even there or not.

Q. Or his actions?

A. No.

Q. Now, you testified this afternoon in response to some questions that Mr. Brick asked you, that when you had up for consideration and for decision the invitation which the Federal Government sent you as to bid f.o.b. mill in April, 1938, copy of which is in this record as Commission's Exhibit 1339, that before you finally decided what you would do about that you had a meeting in Den-

ver, Colo., which was attended by you, by Mr. H. O. Warner, by Mr. Hoenig, and who else?

A. Mr. Morse.

Q. Mr. R. J. Morse?

A. Yes.

Q. And what position did Mr. Morse hold at that time with any company of which you had knowledge?

46584 A. He was general manager.

Q. General manager of what?

A. Ideal Cement Company.

Q. Of the Ideal Cement Company?

A. Yes.

Q. And Mr. Charles Boettcher is president of that, or was at the time?

A. Yes, sir.

Q. And Mr. Charles Boettcher was also president at that time of the Oklahoma and the Arkansas Portland Cement Companies?

A. Yes, sir.

Q. And what was the purpose of this meeting in Denver?

A. To discuss that proposal.

Q. For the purpose of arriving at a decision as to whether that you would bid or not bid; is that correct?

A. That is why I attended.

Q. And you frequently had meetings with Mr. Morse and with Mr. Warner and others inside of this group of companies, your affiliated companies, concerning such matters when they arose?

A. I believe that is the first one I had ever had along that line in the 33 years I have been with the company.

Q. But you did have that one?

A. Yes.

Q. And you have never discussed with either Mr. Martindell, traffic manager in the office where Mr. H.

46585 O. Warner works, or with Mr. H. O. Warner, anything about land-grant information that they secured from The Cement Institute or from any of their competitors at any time in the past?

A. Well, that is a pretty long question. I would have to answer that in two or three different ways.

In the first place, Mr. Warner and Mr. Martindell do not work in the same office.

Q. Well, in the Denver office.

A. They have offices of their own.

Q. Well, in the Denver office of the Colorado Portland Cement Company.

A. And I have never discussed any land-grant rates or any other kind of rates at any time with Mr. Warner.

Q. Or with Mr. Martindell?

A. I secured, when he was traffic manager, why, he furnished us with our rates.

Q. And he was under the supervision of whom?

A. Sir?

Q. And under whose supervision was Mr. Martindell?

A. Well, he was the head of his own department. He was general traffic manager of the Ideal Cement Company.

Q. And under whose supervision was the Ideal Cement Company at that time?

A. Well, the present board of directors, I dare say.

Q. Headed by Mr. Boettcher, Mr. Charles Boettcher?

46586 A. Mr. Boettcher was president of the company, yes.

Q. And you did from time to time receive land-grant information and information relating thereto from Mr. Martindell?

A. Yes, from Mr. Martindell. Mr. Warner is only connected with the Colorado Portland Cement Company.

Q. And you used the information in some instances which you thus obtained in connection with making up your bids?

A. From Martindell?

Q. Yes.

A. Yes, I used it like I did other rates.

Q. That is, in quoting prices to the Federal Government in your bids; is that correct?

A. In preparing bids some of the information, as I stated previously in my testimony, we secured direct from the railroads, that is a short cut. You see, I asked Martindell, he asked the railroads, and I asked them myself.

Q. Do you not know whether Mr. Martindell received —that is, from what sources he received some of the information he gave you; do you?

A. Do I know?

Q. Yes.

A. Not of my own knowledge, no.

Q. You just received it from him?

A. That is right.

Q. And you did not go back of that?

46587 A. That is right.

Q. In those instances?

A. No.

Q. As president of the Oklahoma and the Arkansas Portland Cement Companies, Mr. Boettcher served as chief executive officer all the time that he has filled those offices, hasn't he?

A. He is president of the company.

Q. And serves in that position as a president of the company usually serves; is that correct?

A. Sir?

Q. And serves in that office as a president of a company usually serves?

A. Yes, he was president.

Trial Examiner Norwood: He was an active executive?

The Witness: He is the only president the company has had.

Trial Examiner Norwood: But was he the active executive of the company?

The Witness: Yes; he was the active executive of the company.

Trial Examiner Norwood: Directed its affairs, and so forth?

The Witness: Sir?

Trial Examiner Norwood: Directed its affairs?

The Witness: Yes, or delegated the direction of

46588 them as he saw fit.

By Mr. MacIntyre:

Q. Isn't it a fact that Mr. Boettcher was acting in the behalf of the Arkansas and the Oklahoma Portland Cement Companies, of which he was president, when he wrote this letter that I show you, Commission's Exhibit 415-27?

46590 A. The letter does not state why he wrote it. He just wrote it. It is addressed to Mr. Rader of the Code Authority.

Q. That is Mr. Boettcher's signature on the letter, is it not?

A. It looks like it.

Q. You are a business man, Mr. Thompson, handling the affairs or at least working for the Oklahoma and Arkansas Portland Cement Companies; you are one of the

officials, and I want to ask you what plant or cement mill with which you know Mr. Boettcher was connected in any way could have been affected as directly as the Oklahoma and Arkansas Portland Cement Companies would have been affected, through the erection of a new mill at Foreman, Ark.?

46591 Trial Examiner Norwood: I do not see how that goes to this statement about the control of his policies, pricing policies.

Mr. MacIntyre: I think it is on all-four with it, if Your Honor please.

Trial Examiner Norwood: In what way?

Mr. MacIntyre: In that Mr. Boettcher, in writing this letter, Commission's Exhibit 415-27, took up a matter with The Cement Institute, that is, with Mr. Rader, who at the time was a trustee of The Cement Institute, although he was also serving as chairman of the Code Authority, which, of course, was The Cement Institute, or a group of its representatives, the matter of a building of a plant, a new cement plant, at Foreman, Ark., near the Arkansas Portland Cement Company's plant, and was pleading, as the exhibit shows, with The Cement Institute and its officials to do something about the prevention of the building of that plant. Now, it does go to the point of whether or not Mr. Boettcher attempted to have The Cement Institute, or any of its representatives, aid him in affecting the policy of sales or the volume of sales

46592 of the Arkansas Company in that disfriet at that time.

Trial Examiner Norwood: Objection sustained.

By Mr. MacIntyre:

Q. Mr. Thompson, can you tell us whether Mr. Boettcher, the president of the Arkansas Portland Cement Company and the Oklahoma Portland Cement Company, has any connection with any other cement manufacturing plant which would be affected to as great an extent as the two companies that I have just mentioned, through the building of a new cement plant in either Oklahoma or Arkansas?

A. Well, I would not know what was in Mr. Boettcher's mind by looking at the letter, Mr. MacIntyre; he wrote to the Code Authority asking them about what the N.R.A. had to do with the thing. That is the way it strikes me. I do not want to evade your question.

Q. Mr. Thompson, I am not asking you about the letter or what was in Mr. Boettcher's mind, either. I am asking you whether or not, to your knowledge, Mr. Boettcher had any interest in any other cement mills that
46593 would be affected to the same extent as the Arkansas and Oklahoma Portland Cement Companies, through the building of a plant in either of those two States?

A. I don't know all about Mr. Boettcher. I testified that he was preisdent of the Arkansas and Oklahoma Companies. I do know that to be a fact.

Q. Does he own any other companies in those two States?

A. Not that I know of, but I could not swear to it.

Q. Have you ever heard of his owning any other companies in those two States?

A. Well, there isn't but one in Arkansas.

Q. What?

A. There isn't but one in Arkansas.

Q. Well, Oklahoma, I am talking about, and Arkansas?

A. I never heard of it.

46594 Washington, D. C.,
Friday, October 18, 1940.

46596 P. A. THOMPSON thereupon resumed the stand and testified further as follows:

*Cross-Examination (Continued) by Mr. MacIntyre.*

Q. Mr. Thompson, with respect to the testimony
46597 you gave on direct to the effect that Mr. Boettcher, Charles Boettcher, president of the Oklahoma Portland Cement Company and of the Ideal Cement Company, not having anything to do with the price policies of your company; do you recall that testimony?

A. I do not believe I said that.

Q. Well, what is your testimony on that point?

A. I said he delegated sales policy to the local management.

Q. But Mr. Boettcher continued to concern himself and to be involved in the determination of price policy; hasn't he.

A. No.

Q. I show you Commission's Exhibit 2240. Is that a letter that you sent to Mr. Boettcher?

A. Yes.

Q. You took that up with Mr. Boettcher in connection with a discussion of price policies and pricing action of the Oklahoma Portland Cement Company; didn't you?

A. I would not say so. I just dropped him a letter once or twice a month.

Q. What was the purpose of your discussing prices in this letter with Mr. Boettcher as you did?

A. I believe the letter states I had already taken action on the matter. It was just a matter of reporting.

Q. Well, why is it necessary for you to report pricing policies and action to Mr. Boettcher?

A. I did not state it was necessary to do it. I 46598 stated that I did do it.

Q. Well, why did you do it?

A. Well, it has been my custom for a good many years to write Mr. Boettcher occasionally and tell him about things coming up down our way.

Q. Why did you do that?

A. Because I want to.

Q. Well, why do you want to do that, Mr. Thompson?

A. Well, I think it is proper for a sales manager to occasionally communicate with the executive head of the company. I did not want him to forget about me being down there in Oklahoma.

Q. Well, concerning prices, why did you consider that you wanted to communicate with Mr. Boettcher concerning your action as to prices?

A. I just merely reported to him what I did.

Q. And you want to take up with Mr. Boettcher the matter of pricing from time to time; is that correct?

A. No, I did not say so.

Q. Well, why?

A. I just wrote that letter there.

Q. Now, I show you Commission's Exhibit 2246, a letter from Mr. Boettcher to L. T. Sunderland, of the Ash Grove Lime & Portland Cement Company, in which he states: "I have requested Mr. Nichols to go down and hope that the meeting will be satisfactory to everyone."

46599 Mr. Nichols is an officer of one of the companies, of which you are sales manager; isn't he?

A. I expect.

Q. That is the Oklahoma Company?

A. Yes.

Q. Can you account for Mr. Boettcher arranging for a meeting with Mr. Nichols with his competitors down in the Oklahoma territory on the date of this letter, if they do not deal with pricing policies and competitive sales policies?

A. I have not said they dealt with anything like that, I do not believe, Mr. MacIntyre.

Q. Well, how can you account for Mr. Boettcher writing Mr. Sunderland, a competitor, a letter like that arranging for a meeting of Mr. Nichols with his competitors, if Mr. Boettcher and Mr. Nichols and his competitors have nothing to do with the pricing policy of the Oklahoma Portland Cement Company?

A. Neither one of them account to me for anything they might do, or letters sent—This letter was not sent to me.

Q. You cannot account for a letter like that even though you have been with the company for some time; is that correct?

Trial Examiner Norwood: Well, did—Answer the question.

Q. Is that correct?

A. Yes.

Trial Examiner Norwood: Did this witness have 46600 anything to do with that letter?

The Witness: No, sir.

Mr. Leisure: No.

By Mr. MacIntyre:

Q. And is your answer the same with respect to Commission's Exhibit 2253-A and B, a letter from Mr. Nichols to Mr. Boettcher; Mr. Nichols I believe you said was your vice-president of the Oklahoma Portland Cement Company, —that is his signature at the end of the letter, isn't it?

A. It looks like it.

Q. And is your answer the same—

A. I will have to read the letter, if you will pardon me. I have never seen this letter.

Trial Examiner Norwood: Give him time.

The Witness: May I have the time to read it?

By Mr. MacIntyre:

Q. Yes; go right ahead, Mr. Thompson.

(There was a short pause while the witness is reading the letter.)

Q. You cannot account for Mr. Nichol's action in writing this letter to Mr. Boettcher about pricing policies in the light of your testimony; can you?

46601 The Witness: Why, I do not see anything in the letter about pricing policies. It merely states we are going down to Louisiana to try to sell some cement, and I am going along with him.

By Mr. MacIntyre:

Q. And you cannot account for any reason of Mr. Nichol's writing that letter to Mr. Boettcher about the bids that he and you were to submit to the highway department?

A. Well, knowing Mr. Nichols as I do, I think he is merely telling the Denver office that we would both be away from the office for about 10 days.

Q. And you cannot account otherwise for the writing of the letter?

A. No, I do not think there is anything to it but that.

Q. I show you Commission's Exhibit 2256-A and B, a letter which purports to have been written by you to Mr. Boettcher. That is your signature at the end of it, isn't it?

A. Yes, that looks like it.

Q. If Mr. Boettcher did not play any part in the pricing policies of the Oklahoma and Arkansas Portland Cement Companies, why did you write him there as to action that competitors were taking, and that you were taking at that particular time, and action that you contemplated taking concerning prices?

46602 A. Let me read it, will you please?

Q. Yes.

(There was a pause while the witness is reading the letter.)

A. What would you like for me to tell you there?

Mr. MacIntyre: Will you please read the pending question.

(Question read.)

A. Do you want me to tell you why I wrote the letter?

Q. Yes, sir.

A. Well, in the second paragraph—the first paragraph

I told him I had not written to him for some time because I knew he was not at home. In the second paragraph I am bragging about selling a couple big orders down in Louisiana.

Q. Yes, but—

A. And in the third paragraph I tell him that I had found some prices out in the country that reflected a lower price than we had been quoting. I did not ask him anything about it, just told him what I had found; and in the next paragraph, why, I have made some mention about a political matter in Oklahoma, a change in appointments on the highway commission. In the last paragraph, why, I have told him about we were having some bad weather and we were not shipping very much,—that is kind of an alibi, that last one, I guess.

Q. Now, in this third paragraph of this letter
46603 which you refer to, which reads as follows:

"You have perhaps heard that the Lehigh people sent out prices last Saturday reducing Iola base 17 cents a barrel. As soon as we heard of this I called Mr. Brown on the telephone to verify the rumored reduction."

Is that Mr. Brown of the Alpha Portland Company?

A. No, that would be the Lehigh.

Q. Of the Lehigh Portland?

A. I do not know Mr. Brown of the Alpha Company.

Q. And he is in the sales department of one of your competitors?

A. Yes, he is sales manager of the Lehigh at Kansas City.

Q. And you say to verify this rumored reduction?

A. I merely called him up to ask him if he had verified it.

Q. That is, to ask him whether he had sent out quotations concerning new prices?

A. Yes.

Q. "And was advised that the reduction was due to the fact that the Lone Star people cut the price on the Missouri letting of January 20th from 11 cents to 16 cents a barrel on 393,000 barrels."

Why did you feel that it was necessary to report such details to Mr. Boettcher on this occasion?

A. It was not necessary at all. I just did it.

Q. Well, why, did you do that?

46604 A. Kind of keeping in touch with the business.

Q. Concerning pricing matters?

A. Sir?

Q. Concerning pricing matters?

A. Well, concerning a lot of things, the weather, and the highway commission, and selling some business down in Louisiana, just one of those rambling letters.

Q. Now, I show you Commission's Exhibit 2255, a letter from Mr. Boettcher to you in which he states that he has not heard anything yet from Mr. Brown of the Alpha Company, and may not hear at all, so you will have to govern yourself accordingly and the prices that are being made. Do you recall that?

A. I do not know. There is no signature. Mr. Boettcher's name is not signed.

Q. That is a carbon copy, which the record shows was taken from Mr. Boettcher's files in Denver.

Can you account—

A. Well, I would say this, if you say you took it from his files I guess that is true. It sounds kind of like Mr. Boettcher might have written this letter all right.

Q. You have no personal recollection of that communication at this time?

A. Well, he is writing about an expense account being a little too big. He has been doing that for a good long while.

Q. Do you recall that incident?

46605 A. No. I get one like this about these expenses being a little bit big—

Q. And you do not recall also the incident about his reporting to you having talked the matter over of pricing with Mr. Brown of the Alpha Company?

A. No, he never told me anything about that.

Q. And you can't account for his writing you letters about his discussion of pricing with competitors such as the Alpha Company?

A. Why, I do not know, I could not see how it could possibly have any connection between that letter and the other letter. There are two men happened to be named Brown, one of them is with one company and one is with another.

Q. One is with the Lehigh Company and the other with the Alpha.

A. Yes.

Q. Yet, you at this time cannot account for correspondence that refers to such men in connection with prices that they quote?

A. Well, I think I accounted for calling up Mr. Brown of the Lehigh there, as I stated in my letter.

Q. Is it your testimony that this letter that I refer to, and in which you say that you show that you discussed prices with Mr. Brown of the Lehigh Portland Cement Company, that that is the only instance that you
46606 ever discussed prices with Mr. Brown of the Lehigh Portland Cement Company?

A. I did not state that I discussed prices with him. I called him up to get him to verify something that I had picked up.

Q. Well, is that the only time—is it your testimony that that is the only time that you ever did that?

A. I would say so. I might occasionally ask a competitor to verify something that I had already found out about, just to check up, but I do not recollect of any other instance.

Q. That is, you desire in such instances verification from competitors as to what quotations they are sending out?

A. I did not say I desired.

46607 By Mr. MacIntyre:

Q. Well, why do you call them such as you did in this instance about which you testified that you called Mr. Brown of the Lehigh Company?

A. I have got no recollection of having any specific reason for doing that. I merely stated that I did call him up to verify a rumor.

Q. Yesterday afternoon you testified at length concerning correspondence that you had with Mr. E. E. Woods of the Southwestern Lumbermen's Association. I now show you Commission's Exhibit 737-AA. Do you recognize that as a letter you received from Mr. Woods,—do you?

(The witness is looking at the letter referred to.)

A. I suppose I received that letter, Mr. MacIntyre.

Q. Your company submitted that to the Commission under the subpoena *duces tecum*; and the only way you can account for having it is your receipt of it from Mr. Woods; is that correct?

A. Sir?

Q. I say—

A. Well, he was writing still following that other correspondence we talked about yesterday. That is the way it would sound.

Q. You consider it connected with the other correspondence?

A. Yes; I do.

46608 Q. I call your attention to Commission's Exhibit 2623, a letter from Mr. F. E. Tyler, president of the Dewey Portland Cement Company, to Mr. W. S. Mallory, statistician, Cement Institute, under date of September 20, 1934, in which Mr. Tyler states as follows:

"Right in District No. 8 during the last few months I absolutely know of approximately a hundred thousand barrels of cement that have been shipped for account of certain companies, and being familiar with all the figures being compiled and seeing your reports monthly, there has not been a single month that your report or Mr. McClain's report has shown where even one barrel or more has been charged to one company where the other company shipped the cement. This process of allocating shipments I have taken a considerable part in myself here, and I will say again that not one adjustment has been made using the same principle you have used covering the subject matter."

Will you tell us all you know, Mr. Thompson, concerning the transactions about which Mr. Tyler wrote to Mr. Mallory in that connection?

A. Exactly nothing.

46610 Q. Do you recall the shipments that the Dewey Portland Cement Company made to Ellis & Lewis Company at Bartlesville, Okla., for your account, of approximately 6,000 barrels?

A. We bought about 6,000 barrels of cement from Dewey, and instructed them to ship them to Ellis & Lewis.

Q. For your account?

A. Yes; we bought it.

Q. And as I understand it you paid them 15 cents per barrel below what your openly published price was at Bartlesville, Okla., as of that date?

A. Yes.

Q. And you collected?

A. We paid Dewey.

Q. Yes; and you collected from Ellis & Lewis the same amount that you paid Dewey; is not that correct?

A. Yes.

Q. Now, Dewey secured on that shipment a considerably higher mill net than you had received if you had made the shipment; is that correct?

46611 A. I assume that is correct.

Q. Because they shipped it only four miles, and as I understood your testimony on direct you would have had to ship it 175 miles, or thereabouts; is not that correct?

A. Yes, sir.

Q. Now, referring to Respondents' Exhibits 3566 to 3576, inclusive—

A. 3566 to 3575, inclusive.

Q. 3566 to 3576, inclusive (indicating).

A. Oh, I see. Thank you.

Q. And also referring to Commission's Exhibit 3093-E to W, which is in photostatic form, and which Mr. Brick showed you, and which show invoices from the Dewey Company to you for this same cement; you recall?

A. You mean photostatic copies of the Dewey invoices?

Q. To you. Do you recall that—

A. Yes.

46612 Q. Now, in connection with this transaction whereby the Dewey Portland Cement Company shipped 6000 barrels for your account to Ellis & Lewis Corporation, Bartlesville, Okla., you stated that someone, just previous to your turning it over to Dewey, told you that Ellis & Lewis had been quoted a price of 15 cents below what you refer to as the "going market price." Can you tell us who told you that?

A. I don't believe I stated that "someone." I stated that Ellis & Lewis told me.

Q. Who told you in the Ellis & Lewis Company?

A. Mr. Lewis.

Q. What are his initials?

A. C. S. Lewis.

Q. When did he tell you that?

46613 A. Well, if I can refer to these papers here, it was between the time we shipped the first three cars at 15 cents barrel higher and we purchased the last lot of cement from Dewey. That would be some time between the last shipment, the three cars that we shipped was October 5th, and the first we had purchased from Dewey, I believe, was the 17th of November in the year 1936.

Q. Did he tell you that Dewey had offered them a price of 15 cents below your quoted price at that location?

A. No, sir.

Q. Did he tell you who had?

A. No, sir.

Q. And you never made any further check?

A. I took his word for it. I have known him for 20 years.

Q. How do you determine, Mr. Thompson, what is the so-called going price at a particular destination where you are quoting, when you hear that someone else is quoting a price different from the price you have been quoting at that destination?

A. Well, in this particular instance, it was a considerable amount of cement that this man was buying, and he had bought large quantities of cement from us over a number of years, and I was perfectly willing for somebody to take his word that some competitor was trying to take his account away from us and offering a concession to get his account.

Q. Assuming for the purpose of this next ques-
46614 tion that what he did tell you was the truth—was the fact—

A. I proceeded upon that assumption.

Q. Now, assuming for the purposes of this question that that is the fact, how can you determine, or do you determine, when you get such information, as to what the market price, the going market price is? One man tells you the price he gets from one company is one thing, and you are quoting another. Which is the market price, the so-called going market price?

Mr. Brick: May we have that question read, please?

Trial Examiner Norwood: Read it.

(Question read.)

A. In this particular case I was not concerned with what the so-called going market price was. I was only concerned with the price he said he had on that particular lot of cement.

By Mr. MacIntyre:

Q. Yes; but you told Mr. Brick on direct testimony that this 15 cents per barrel quotation—that you were told that Ellis & Lewis was 15 cents per barrel below the going market price. What do you mean by "going market price"?

A. The price that was in the destination price books.

Q. In other words—

A. To Bartlesville.

Q. —if anyone makes a different price than is in your tabulation of destination prices that you quote, they are doing something that is different from the going
46615 market price; is that correct?

A. I believe I have testified, Mr. MacIntyre, that things like that are going on almost continually in our marketing area, where large jobs are involved.

Q. That means on jobs to contractors?

A. Yes; to contractors.

Q. Can you cite any instance where it occurred prior to July 2, 1937, and subsequent to July, 1933, with respect to quotations to dealers?

A. To dealers?

Q. Yes.

A. Well, as a rule, dealers just buy a car at a time, Mr. MacIntyre.

Q. And at your—

A. To re-sell at the list price.

Q. And at your destination quoted price?

A. Yes.

Q. But you cannot cite us any instance where it occurred differently in that period of time?

A. I don't recall. It might have been true.

Q. Well, where it does occur that you received some information that one of your competitors, or more than one of your competitors, are quoting a price, whether it is in 1931 or when it occurred, that is different from the price that you quoted at a particular destination,
46616 how do you determine whether the price you quote or the price that they quote, since they are different, is the going market price, as you call it?

A. How do I determine it?

Q. Yes.

Mr. Brick: I object to that question, if Your Honor please. I do not think the witness has said he did any such thing.

Trial Examiner Norwood: Objection overruled.

A. Well, just simply by subtraction.

By Mr. MacIntyre:

Q. Subtraction from what?

A. One from the other, to see whether the other fellow's was lower than ours.

Q. In other words, you figure that the higher price of

the two or the highest price of the three different prices is the going market price; is that correct?

A. The lowest.

Q. How do you subtract the lowest from the highest?

A. Well, I explained, or attempted to explain, for instance, to use figures, if our price is $2.50, and somebody else quotes $2.35, I consider that $2.35 is the then prevailing market price?

Q. Instead of the $2.50?

A. Yes; that would be high.

46617 Q. How can you say then, using that as a standard, a test, as to what is the going price—how can you now say that the price that Ellis & Lewis told you that they had been quoted by a competitor of yours was not the going market price at that time in Bartlesville, Okla?

A. Well, Mr. MacIntyre, I believe I stated very definitely that in that transaction we were not concerned at all about the going market price.

Trial Examiner Norwood: Well, that is not what he asked you.

The Witness: Read the question.

Trial Examiner Norwood: He referred to the going market price in connection with that circumstance there, and he is asking you how you determined that the other price, the price which this other man cut under, was the going price?

The Witness: We had previously determined the prices that were in our destination price list were the prevailing market prices, if that will clear it up.

Mr. MacIntyre: May I have the last answer read?

Trial Examiner Norwood: Read it.

(Answer read.)

By Mr. MacIntyre:

Q. How did you determine that?

A. Well, in various ways, Mr. MacIntyre—by gathering information in the field, for instance.

46618 Q. So when you have the price that you find your competitors are quoting in a particular market, and you list that on your price book, you consider that the prevailing market price there, irrespective of what somebody else would probably quote, such as what somebody did quote Ellis & Lewis in this instance; is that correct?

A. Of course, I don't want to argue with you, but I would not know what somebody else quoted until I got some further information. When I did, if it was quoted to the trade generally, I would correct my price book. If it was on some of this particular lot of cement I might or might not correct our destination price book.

Q. Mr. Thompson, did you ever consider the question as to whether or not a reduction in price by any one of your competitors, or yourselves, in their quotations at any particular destination, was, in fact, a price change, rather than a dyviation from what you learned to be the going market price there?

A. Mr. MacIntyre, I am not very much interested in theory.

Q. I am not talking about theory; I am talking about practice now—specific acts, as to what you consider one as against the other. Have you ever considered that situation to be a price change instead of considering it, as you testified here, a deviation from the so-called going market price at any particular location?

46619 A. I don't believe I can answer that for you.

Q. You just have not considered it?

A. No.

Trial Examiner Norwood: Well, are there not some other tests for the going market price? For instance, its consistency with prices at other points?

The Witness: Judge, it is simple enough to me, in my mind, to consider that the price on a lot of cement, any particular lot of cement that a man has to buy, is the best offer that is made to him for that lot of cement.

By Mr. MacIntyre:

Q. Mr. Thompson, coming to this deal that involved your company, the Dewey Company, and Ellis & Lewis for a shipment of 6,000 barrels to Bartlesville, Okla., who initiated that deal?

A. Who initiated it?

Q. Yes; who proposed first that the Dewey Company ship that cement for your account?

A. Why, I did.

Q. I didn't understand you.

A. I did.

Q. Who proposed that to Ellis & Lewis?

A. I told the contractors—they complained to us that it was taking too long to get the cement into Bartlesville;

that they could get it a lot quicker; they had already signed contracts with us and placed the order with us.

46620 Q. You proposed—

Mr. Brick: Let him finish.

Mr. MacIntyre: Have you finished?

Mr. Brick: Finish your answer.

A. (Continuing) And they also complained that the price they had was lower than the price we had quoted them when they originally placed the order; so these people, being one of our very best customers, naturally I tried to accommodate these people. I then asked the Dewey Company if they would not be willing to sell us this cement at this particular price, and they accepted the order.

By Mr. MacIntyre:

Q. So that you proposed that to the Dewey Company before you proposed it to Ellis & Lewis?

A. Well, I will probably have to state again that Mr. Lewis came to me with these two things that he would be satisfied with, and I told him that I would see what I could do for him. Then I went to, or got in touch with the Dewey people and made these arrangements, and told Mr. Lewis I had made the arrangements, that we could do what we did do.

Q. With whom in the Dewey Company did you make your arrangements?

A. Mr. Gray.

Q. The sales manager?

A. Yes.

46621 Q. By correspondence or how?

A. I don't recall. I probably talked to him about it. It was not anything you could write about.

Q. What, in addition to this increased mill net of the Dewey Company over and above what you would have received if you had made the shipment did Dewey get as a consideration for taking that order off your hands?

A. I suppose you mean that the Dewey Company got a price at their plant which would have been higher than the price we would have received if we had got it.

46622 Q. What else, outside of that, did Dewey get?

A. What else did they get?

Q. Yes; from you, in the consideration you gave them?

A. Why, they got paid for the cement.

Q. They did not get anything else from it?

A. No; we just paid them just exactly what we bought it for.

Q. Would you have dealt with the Dewey Company in handling this deal as you did if Ellis & Lewis Company had told you that the Dewey Company had cut the price?

A. I don't know what I would have done if so and so had happened.

Q. You would not have given this order to a price cutter who had cut your price, would you?

46623 Answer the question. Would you or would you not?

A. Why, in this particular order, I would have tried to accommodate our customer regardless of the circumstances. That was my only thought, getting him appeased.

46624 Q. On direct examination you told Mr. Brick about this master price book which you have in your office.

A. This what?

Q. The master price book—about the price book that you keep in your office.

A. Office destination price list?

Q. Yes; you told him about having such a thing, and you told him that you show in there the destination price alongside the names of various destinations, and you also told him that you have on that a list of the freight rates to those destinations. Do you recall?

A. Yes; I think I stated that.

Q. And those freight rates are shown from what points?

A. From what points?

Q. Yes.

A. Well, from a number of cement producing points.

Q. Name some of them, please.

A. What price book are you talking about now; for what State? I stated that we had one for Oklahoma, one for Texas, and one for Arkansas—different ones.

Q. Well, take for example, the one you have for Texas.

46625 A. Well, from memory, I couldn't say, to be absolutely accurate, but I believe from Texas that has all the Texas mills and the Oklahoma mills and Kansas mills, and Louisiana and Arkansas plants.

Q. Why do you show freight rates from all or those mills on that master price book to these particular destinations?

A. Because they are places where cement plants are located.

Q. Well, do you ship from those plants?

A. No; we do not ship from them.

Q. Why do you show freight rates from them?

46626 A. For convenience.

Q. For convenience of what?

A. For preparing prices.

Q. In preparing destination prices that are shown in the book?

A. Yes.

Q. And in preparing those prices you take a so-called base price that you consider applies at these various places and add the freight from those bases to the destination involved, and then write down the sum total as the destination price; is that correct?

A. We prepare the prices and data that we obtain from our salesmen and customers.

Q. Yes; but when you use this freight, you add that to the so-called base price to some other point, and the sum total of that is the destination price; is not that correct?

A. Well, I wouldn't express it that way.

Q. Well, is not that correct?

A. I said we calculated from the mill prices that are reflected—written quotations in reports from our salesmen and advice from our customers. It may largely check back to something of that sort.

Q. Well, you do use that and add the freight to it in computing the delivered price; that is the reason

46627 you carry the freight in the master price book; is not that correct?

A. I said yes, Mr. MacIntyre.

Q. Now, referring to Respondents' Exhibit 3577-A to Z-24, that is merely a copy of the results you got in noting your destination prices in your master price book for the State involved; is it not?

A. It is a copy of the sales.

Q. But you just copy it after you arrive at the destination prices, and you put it on the master price book; you just copy it off these and give them to the salesmen; is not that correct?

A. I so testified. When I send a salesman out I tell him what the price is.

Q. Can you answer the question as to whether or not

you merely copy it and compute the result that we have outlined, on the master price book as to destination price, on to price lists for salesmen, such as Respondents' Exhibit 3577? Is not that what you do?

A. That is largely true. We correct it from time to time, from other sources.

Q. And some of the freight rates that are in your master price book—or I would say the freight rates that appear in the master price book, are those that are taken from the rate compilations, such as you receive from your Denver office, and such as are shown by Respond-
46628 ents' Exhibit 3578-A to Z-66; is not that correct?

A. Yes, sir.

Q. Now, as to the list of the mills there from which the freight rates are shown in your master price book, is that a list of the mills from which shipments could be made into a State, or just a list of mills that you have determined to be basing-point mills?

A. Well, it is neither one nor the other.

Q. What is it, then?

A. It is a list of the mills that are continually doing business in that particular market.

Q. You said it was neither one nor the other, but in the last part of your statement you attempt to make up the total of the mills.

A. No.

Mr. Brick: I object to that, if Your Honor please. That is argument. Mr. MacIntyre asked him if it included the mills which could ship into the territory. Well, naturally, any mill can ship there.

Trial Examiner Norwood: Wait a minute. Do not make statements about it.

Objection overruled. Answer the question.

A. Mr. MacIntyre, I understood the question was kind of a double-barreled question about two different things;
first, that anybody could ship in there, might ship
46629 maybe a car or two a year, into that area; in the other you wanted to tie it down to just what you call the so-called basing area.

By Mr. MacIntyre:

Q. But you did include those that make occasional shipments into a State?

A. No, I—

Q. Is that correct?

A. No.

Mr. MacIntyre: "No" is the answer, Mr. Reporter.

Q. Now, you told Mr. Brick that W.P.A. shipments require dealer service even on carload quantities; is that correct or is it not correct?

A. I was expressing an opinion.

Q. Well, what dealer services are rendered on W.P.A. shipments when they are made on more than a car quantity direct to a job site which is alongside a railroad?

A. See, the invitation states on the face of it what is required of the contracting party; it states whether—

Q. Well, where the W.P.A. requires a delivery in a carload quantity alongside of a spur with W.P.A. trucks picking cement up at that spur track from the car and carrying it to the job site, what services does a

46630 dealer deliver to W.P.A. in such an instance, Mr. Thompson?

A. He collects the cement.

Q. From whom?

A. From W.P.A.

Q. From the United States Government; is that correct?

A. Well, you said W.P.A.; I will say W.P.A.

Q. Yes, that is all. I say, that is all that he would render in that case,—in such instance?

A. Well, I don't know. If you pin it down to that, that might be true.

Q. I believe you told Mr. Brick on direct examination that you could not recall any instance where customers other than railroads and the United States Government had asked for or received f.o.b. mill prices from you at the plant—that is, at your plants. Do you recall that?

A. Other than the Government?

Q. And railroads.

A. I do not recall that.

Q. You recall that customers for a long period of time did come to your plant and take cement on their trucks—that is, up to the beginning of 1933; do you?

A. For a long period of time?

Q. Up to some time in January, 1933.

A. No, not for a long period of time.

46631 Q. Well, they did do it.

A. It was a short time. The oil field is right there in town.

Q. They took it at the plant; didn't they?

A. The oil fields?

Q. Yes.

A. They took it out of box cars. We had it loaded on box cars, set it down at the switch.

Q. But at your plant?

A. Well, in most cases the box-car set down town.

Q. Well, in some instances they came to your plant for it?

A. I don't think so. I would be pretty positive. They might have been set at the switch close to the plant, but that is the way we handled it.

Q. Is it your testimony that no customers ever came to your plant for delivery by trucks?

A. No, that would not be my testimony. I said as a rule.

Q. Well, they have come to your plant, taken it in trucks before 1933; is that correct?

A. No, I did not say that they had. I said I could not testify that in no instance had they done that. It might be in some instances they had come there and got a few sacks, or something.

Q. Wherever that occurred they would be naturally interested in getting it at the mill if they did take it at
46632 the mill; don't you think? Is that correct?

A. Well, usually they were interested in getting it a little quicker than they could ship a car, some emergency was usually the case that they come there.

Q. To the extent that that occurred it was a desire on their part to get it at the mill under the circumstances?

A. No, I would not say that.

46633 RAYMOND W. MOORE, called as a witness on behalf of the Respondents, being first duly sworn, testified as follows:

*Direct Examination by Mr. Seeley.*

I am associated with the Dewey Portland Cement Company and have been associated with that company since January 25, 1912. I have held the positions of director, vice president, secretary, general counsel, traffic manager and fuel purchasing agent. I was traffic manager from

the beginning; in 1923 I was elected director. In
46634 1924 I was elected secretary and made general counsel and fuel purchasing agent. Since that time I have occupied all of the positions. I have been consulted by other executives of the company on important matters of policy. Prior to coming with the Dewey Company I had five years' experience with the Cudahy Packing Company, Kansas City, Kansas, in the traffic department in all positions excepting that of traffic manager. I have qualified as an expert witness on traffic matters before the Interstate Commerce Commission and have practiced before the Interstate Commerce Commission and various state commissions since about 1914.

46634 Q. Mr. Moore, does the Dewey Company have any policy with respect to diversions of its shipments in transit without its consent?

A. Yes, sir.

Q. What is that policy, and tell us how long you have had it?

A. The policy is to try and prevent diversions
46635 of our shipments in transit, and it has been in effect ever since I have been with the company, 28 years.

Q. Well, tell us what are the reasons for that policy, as you know them?

A. Our shipments are sold at prices delivered at destination and we naturally try to obtain the destination prices. Shipments that may be diverted in transit from one destination to another has caused customers at the destinations to which the shipments have been diverted to complain to the company because of the invasion of their trade territory by a dealer not located at that point.

Q. And the Dewey Company has had that experience—

A. Oh, yes.

Q. —with diversions?

A. Yes.

Q. And those dealers who complained to you were customers, good customers, of the company?

A. Yes, sir.

Q. Does the Dewey Company use any stamp on its bills of lading with respect to this policy which you speak of in opposition to the diversions in transit?

A. It does.

Q. How long have you used such a stamp, Mr. Moore?

46636 A. I do not have the date definitely in mind.

The witness identified Resp. Ex. 3585 A as an original letter addressed to him by Mr. P. E. Watson, General Freight and Passenger Agent of the Missouri Pacific Railway Company at Kansas City, Missouri, and Resp. Ex. 3585 B as a letter to Mr. Watson dated May 15, 1935.

Q. And can you not tell us with reference to the practice of the company of stamping bills of lading, how long you have been doing that?

A. Yes. It was immediately after this letter from Mr. Watson was received, which is dated May 23, 1935, that we began over-stamping our bills of lading.

Q. Prior to the receipt of correspondence in question, you just identified, Mr. Moore, did you have, or did the Dewey Company have any communications concerning this practice of stamping of bills of lading?

46637 Q. I would like to have you answer that question and confine it, Mr. Moore, to your own knowledge in your capacity with the company.

A. No. No such communication was received.

Q. And do these papers represent the circumstances under which you learned of this practice?

A. Yes, sir.

Q. So far as you know, did the Dewey Company receive at any time any communication from The Cement Institute or any of its competitors regarding the stamping of bills of lading?

A. Not to my knowledge.

46638 Q. Mr. Moore, has the Dewey Company communicated with any of its competitors or taken any action or steps with any of its competitors concerning this matter of stamping bills of lading?

46639 Q. Well, confining yourself to your own knowledge in your capacity with the company, Mr. Moore, will you answer the question?

A. It has not.

Q. Has the Dewey Company found that diversions of its cement in transit have occurred since this practice which you have described of stamping bills of ladings?

A. Yes, sir.

46641 (The documents heretofore marked for identification RESP. EX. 3585-A and 3585-B was offered and received in evidence.)

46642 Q. Coming to a new subject, Mr. Moore, has the Dewey Company at times loaded trucks at its plants?

A. Yes, sir.

Q. How were such sales for truck delivery made by the Dewey Company? What price basis?

A. At f.o.b. destination prices.

Q. Did the Dewey Company allow the customer to deduct the rail freight?

Q. Well, suppose you tell us that so far as you recall, Mr. Moore, during what periods the company has made sales to trucks?

A. Well, from our Dewey, Okla., plant it has 46643 been 28 years. Our Davenport, Iowa, plant since 1927.

Q. That is when the plant was built?

A. Yes, sir.

Q. Now, with respect to your Dewey, Okla., plant, did the Dewey Company on such sales made to trucks at the plant allow the customer to deduct the rail freight to the destination?

A. Yes, sir.

Trial Examiner Norwood: What time was that?

The Witness: Ever since I have been with the company in 28 years.

Trial Examiner Norwood: That is prior to July, 1937?

The Witness: Since January 25, 1912.

Trial Examiner Norwood: Up to and including July 2, 1937; is that right?

The Witness: Yes, sir.

Trial Examiner Norwood: Go ahead.

By Mr. Seeley:

Q. Mr. Moore, His Honor's question, that prompts me to remind you that your answers, unless another period is inquired about, are to be confined to the period prior to July 1, 1937.

46644 A. I understand, sir.

Q. Now, so far as this allowance which the Dewey Company made to customers who took delivery of cement in trucks, did the Dewey Company ever attempt to interfere with that allowance or deprive the customer of that allowance?

A. No, sir.

46645 Q. Mr. Moore, with respect to selling cement to customers for truck delivery at the mill, what has been the policy of the company with respect to the allowance of the rail freight to destinations during the time you have been with the company?

A. It has been the custom of the company to allow the full rail freight from Dewey to destination on ship-
46646 ments sold for delivery by trucks.

Q. And were there any exceptions to that, to your knowledge?

A. No, sir.

Q. Did the Dewey Company ever own or operate any trucks for the delivery of cement?

A. No, sir.

Q. Now, with respect to the Dewey, Okla., plant, Mr. Moore, was such trucking as was done at that plant trucking of cement handled by such large trucks or small trucks?

A. The majority of it was handled by one large truck with two trailers.

Q. And as to the other trucks other than this one large truck, did they handle cement in carload or less-than-carload quantities?

A. In small quantities.

Q. Other than this one large truck to the customer, was the demand for truck loading at the Dewey plant small or large?

A. It was small.

Q. Will you tell us briefly how your plant at Dewey, Okla., was equipped for truck loading?

A. Not to a very satisfactory extent.

46647 Q. What was your experience in truck loading at the Dewey plant?

A. Well, when the Dewey plant was originally built, no arrangements were made for loading trucks. When there came to be some demand for loading trucks, we had to use the same loading platforms as were constructed for loading cars. That interferred with the car loadings very materially. The platforms were narrow and made it difficult to handle both types of shipments at the same time. In addition the trucks had to pass through narrow passageways in the plant and across numerous railroad tracks, which made it rather dangerous, both to the truckers and their equipment, as well as to our own employees.

Q. Did you, Mr. Moore, experience any trouble
46648 at the Dewey Okla., plant in connection with li-
censes?

A. Yes; we had considerable trouble, as well as our customers had trouble, trying to truck from our Dewey plant. Several customers from Arkansas and Kansas destination were arrested by the highway police and fined, which resulted in considerable trouble for the company in trying to protect those customers against that situation.

46657 Q. Mr. Moore, at the close of the morning session we were discussing the subject of trucking, or sales to trucks by the Dewey Company, and His Honor asked that you tell us orally what effect these laws referred to in Respondents' Exhibits 3586, 87, and 88 had upon the Dewey Company's policy toward trucking. Will you do so, please.

A. The 1929 Act of the Oklahoma Legislature created restrictions regarding the size of the truck and the operation of the truck, which made it difficult even at that time for the people who desired to truck from Dewey to do so. The Act of 1933 provided restrictions which effectively prevented the operation of the large truck with two trailers, which had been trucking the greater part of the cement from Dewey. Both laws also contained license provisions which made it impracticable for customers in other States to pay those fees and still truck from Dewey.

Q. And did these laws, or did they not, occasion
46658 complaints from the customers of the Dewey Company to the company?

A. Yes, we had complaints from our customers because their truckers were being arrested by the highway patrolmen in their attempt to truck from Dewey, and we did our best to try and arrange with the officials for the trucks to operate, but were unsuccessful to do so.

Trial Examiner Norwood: Now, prior to that time there was no restriction on trucking by your company?

The Witness: No, there had been no enforcement of any restrictions. There probably were some laws.

Trial Examiner Norwood: I mean, so far as your company was concerned, did you—

The Witness: There was trucking.

Trial Examiner Norwood: Did you have any rules against trucking?

The Witness: No, sir; we did not.

Trial Examiner Norwood: And all customers could send their trucks to the mill and buy f.o.b. mills?

The Witness: No, not f.o.b. mill. They bought f.o.b. destination, and we allowed them the rail freight from mill to destination.

Trial Examiner Norwood: Well, that is the same
46659 thing, isn't it?

The Witness: I suppose in one way of looking at it it might be the same thing.

Trial Examiner Norwood: Then, after these laws, tell us what was the net result, did the trucking fall off, that is, the application for trucking?

The Witness: Well, yes, they quit sending their trucks.

Trial Examiner Norwood: They just quit sending?

The Witness: Yes.

By Mr. Seeley:

Q. Now, Mr. Moore, with respect to the other mill of the Dewey Company, the Davenport mill, will you tell us what—I think you told us this morning that you did load trucks at that plant. Will you tell us what your experience was with respect to trucking from the Davenport plant?

A. From the time—

Trial Examiner Norwood: Before these laws, and what was the condition.

The Witness: Yes.

A. When the Davenport plant started to operate we delivered cement to trucks at the plant whenever it was called for. After that situation had been in effect for a number of years the Government issued restrictions limiting the load limit on the Government bridge across
46660 the Mississippi River between Davenport and Rock Island, which cut off the use of that bridge for trucks handling sizable quantities of cement, and then at about the same time the City of Davenport passed an ordinance which restricted the size and limits of trucks that could operate in the city, and that had the effect of cutting off the movement into the tri-cities district, which was the principal market to which they were trucking. Trucks did continue to come to the plant after that, however, from destinations west, and they were loaded, priced the same way as at Dewey.

46662 Trial Examiner Norwood: Identify those others, too.

Q. They are all of the same topic?

A. Respondents' Exhibit 3591 is the original letter dated July 22, 1932, from the Muscatine Lumber & Coal Company to the Dewey Company regarding trucking of cement from the Davenport plant to Muscatine, Iowa.

Trial Examiner Norwood: And the other, is your answer to it—

The Witness: No, sir. This exhibit, Respondents' Exhibit 3592, is a carbon copy of a letter written by Mr. L. J. Capen, our vice-president and sales manager, dated September 10, 1928, to John Schacht & Son, Durant,
46663 Iowa, regarding trucking of cement from Davenport.

By Mr. Seeley:

Q. Was Mr. Schacht a dealer of your company?

A. Yes, sir.

Q. Are those regular business records of your company?

A. Yes, sir.

46664 (RESP. EXS. 3591 and 3592 were offered and received in evidence.)

46665 By Mr. Seeley:

Q. Mr. Moore, with respect to Respondents' Exhibit 3591, would you tell us is that letter typical or not typical of the complaints which you told us this morning you received from dealers concerning trucking of cement?

A. It is typical.

Q. And with respect to Respondents' Exhibit 3589-A to C, do you of your own independent recollection—will you tell us whether that ordinance was adopted prior to or subsequent to the date of this letter, Respondents' Exhibit 3590 in evidence, which is dated September 6, 1932?

A. As I recall it, this ordinance was adopted a few months after, or prior to the exhibit, Respondents' Exhibit 3590.

Q. And I think you said that that applied only to certain—to the westward traffic?

A. No, Respondents' Exhibit 3589-A applies only to the traffic to the City of Davenport alone, while Respondents' Exhibit 3590 applied to the deliveries across the river at Rock Island, Moline, and East Moline that had to use the Government bridge to go across.

Q. Just one more question: Between the date Septem-

ber 16, 1928, of Respondents' Exhibit in evidence 3592, and the date of this ordinance, which you have just referred to, did the Dewey Company to your knowl-
46666 edge ever impose any restrictions upon trucking from it mill as His Honor asked you a moment ago?

A. No, we did not. We loaded trucks all that time.

Trial Examiner Norwood: Now, does that city ordinance make some limit there, 10-ton trucks—what is the limit there?

The Witness: I do not recall the limitation in the city ordinance as to the weights. Eight thousand pounds is apparently the maximum load here. It says total maximum weight of any trailer and the loaded carriers not in any event to exceed 28,000 pounds.

Trial Examiner Norwood: Now, was that such a limitation as discouraged the trucking at that place?

The Witness: Oh, yes, yes, sir. And then other things in the ordinance, such as the rate of speed that they could operate interfered.

By Mr. Seeley:

Q. I have just one further question, Mr. Moore, and, of course, having in mind His Honor's caution to you this morning that your answers are to be limited to whatever your knowledge is as obtained in the capacities in
46667 which you have represented the company, has the Dewey Company had any agreement with its competitors in regard to the trucking of cement at any time since you have been with the company?

A. No, sir.

Q. Has it ever taken any measures in cooperation or in concert with any of the other cement companies and forbid the delivery of cement to trucks?

A. No, sir.

Q. Now, at the time the company discontinued trucking, or at the time that this legislation in Oklahoma pertaining to trucks, do you recall whether any of the competitors of the Dewey Company had discontinued trucking from their mills; do you know that of your own knowledge?

A. No, sir.

Q. Coming now to a new subject, Mr. Moore, is the Dewey Company's plant at Dewey, Okla., so situated that water delivery has ever been available?

A. No, sir.

Q. What is the situation with respect to the Davenport plant; is water delivery available there?

A. Yes. The Davenport plant is located on the banks of the Mississippi River. We have loading docks for loading cement in barges.

Q. Has the Dewey Company made shipments by water from the Davenport plant?

46668 A. Yes, sir.

Q. For how long?

A. Since about 1929.

Q. Has the company ever owner or operated any cement barges of its own,—any proprietary barges?

A. No, sir.

Q. Now, what determines or has determined whether the Dewey Company made shipments from Davenport by barge or by rail?

A. The desire of the customer.

Q. To your knowledge, has the company ever failed to comply with the request of any customer for barge loading of cement?

A. No, sir.

Q. Does your answer hold, irrespective of the destination?

A. Yes, sir.

Q. Where the Dewey Company has shipped by water, what price has it quoted?

A. The destination price has been quoted and the freight—the rail freight from the plant to the destination has been allowed to be deducted by the customer.

Q. Has that always been true?

A. Yes, sir.

Q. Is there any instance, to your knowledge, since 1927, since when you say you have been shipping by water from Davenport, where the Dewey Company failed to give the buyer the full allowance of the rail rate on water shipment?

46669 A. No, sir.

Q. Mr. Moore, has the Dewey Company made any investigation with a view to determining what saving, if any, could be made on shipments by barge from its mill at Davenport?

Mr. MacIntyre: Objected to as irrelevant and immaterial. This witness did not engage in it, and the fact that they probably inquired of someone else as to what their costs were still is irrelevant and immaterial.

46672 Trial Examiner Norwood: I do not think you can negative this allegation as to results in the way you are doing it. I am going to sustain the objection.

46673 Mr. Seeley: Yes.

I offer to prove that the Dewey Portland Cement Company made an investigation to determine whether the company could effect any saving in shipments made to customers by means of public barge, as compared with shipment by rail.

I further offer to prove that the company found that the expense of delivery by barge equivalent to rail delivery, in addition to the charges of the public carriers at published rates for public water carriers, was such that the costs of water transportation are as great as or greater than the cost of shipment by rail.

Do I understand that my offer is rejected?

Trial Examiner Norwood: Yes.

46674 Mr. Seeley: I offer to prove further that, so far as the Dewey Portland Cement Company has found, there never has been any standard basis for the cost of water transportation, that on such shipments as have been made by the Dewey Portland Company by water transportation from its Davenport, Iowa, plant, the differences, if any existed, between the cost of rail transportation and the cost of water transportation have always been made freely and fully available to the customer; and I offer to prove further that the savings effected, if any, have always been passed on fully to the consumer who furnished the barge and made his own arrangements for towing.

Trial Examiner Norwood: As to the latter part of it, that will be some evidence if you would show some shipments under the going price in a way that it gives the customer the benefit of his savings in transportation.

46675 Trial Examiner Norwood: Well, you may continue on the point I have pointed out.

Mr. Seeley: First of all, may I ask to have this exhibit marked for identification 3593, identified.

The Witness: Exhibit 3593 is a statement of shipments of cement by barge from the Davenport plant of the Dewey Portland Cement Company for the years 1931 to 1939, inclusive, with the total shipments for each year and the ratio that the water shipments were to the total shipments.

By Mr. Seeley:

Q. Now, Mr. Moore, with respect to the shipments shown on this Respondents' Exhibit, for identification, 3593, will you tell His Honor on what basis those shipments were made and what allowance you gave the customer on those shipments, and if your answer is not the same for all shipments, will you explain that to His Honor's satisfaction?

46676 *Examination on Voir Dire by Mr. Wooden.*

Q. Mr. Moore, referring to this Exhibit 3593, for identification, do you have any knowledge as to the water transportation agencies which handled these shipments?

A. Yes, sir.

Q. Were they handled by the so-called Government Barge Line?

A. No, sir.

Q. By what transportation agency were they handled?

A. Private carriers.

Q. They went to different points, I take it, on the river?

A. Yes, sir.

Q. And by different carriers?

A. By different private carriers.

Q. Yes.

A. Yes, sir.

Q. Do you know, Mr. Moore, to what points these water shipments were made?

46677 A. Yes; the majority of the shipments were made to points on the Mississippi River between Minneapolis, Minn., and Alton, Ill., where the Government had under construction certain locks and dams. Some of it was also to points where road paving projects were under way. One went to a point where the City of Quincy, Ill., was doing some sewer work.

By Mr. Wooden:

Q. Were all of these water shipments made to some public purchaser?

A. Contractors.

Q. Contractors on public work of various kinds?

A. As far as I know. I don't think there was any private purchaser.

Q. None of it went to dealers?

A. No, sir.

(RESP. EX. 3593 was offered and received in evidence.)

46678 "Q. Now, Mr. Moore, with respect to the shipments shown on this Respondents' Exhibit, for identification, 3593, will you tell His Honor on what basis those shipments were made and what allowance you gave the customer on those shipments, and if your answer is not the same for all shipments, will you explain that to His Honor's satisfaction?")

A. The answer would be the same for all shipments, and the price in each case was the lowest price that the company found in effect at the point of destination when the sale was made, which price became the price of the Dewey Company. The full rail freight charge from the mill to the destination was in each instance allowed the customer.

Trial Examiner Norwood: He was then required to pay the water transportation?

The Witness: Yes, sir.

Trial Examiner Norwood: And, therefore, he made a saving?

The Witness: He made his own arrangements for his water transportation.

Trial Examiner Norwood: That was just the same as delivering to the truck and allowing him the full rail rate?

The Witness: Exactly.

46679 Mr. Moore: His Honor, in summing up your testimony, used the word "saving," that is, that the customers made a saving. Do you mean that you know that they made a saving, or if there was any saving it accrued to them?

A. That is right. If there was any, it accrued to him. I don't know what it cost.

Trial Examiner Norwood: Well, as I understood it, you did know that those transactions represented transactions in which customers did make a saving?

The Witness: Well, no; I didn't say that, Your Honor. I didn't say that I knew they made a saving. I said that if there was any saving, it did accrue to the customer.

Trial Examiner Norwood: Was the water transportation to points of shipment there less than the rail transportation?

The Witness: I could not say because the customer made his own arrangements to charter his own barges and ar-

range for his tow boat. Some of them had their own equipment, and I could not say what their operating costs were.

Trial Examiner Norwood: Anyway, you sold them at the delivered price, and allowed the full rate?

The Witness: Yes.

46681 By Mr. Seeley:

Q. Now, Mr. Moore, I have a further question on this. You told Mr. Wooden in his examination a moment ago that these shipments referred to in Respondents' Exhibit, in evidence, 3593 were sold to contractors, I think you said, for river work, and were wanted with respect to the points about which Mr. Wooden inquired. Were those points readily accessible by rail delivery?

A. Most of them were not.

Q. And in loading barges, has the Dewey Company ever set any minimum barge load that it will ship?

A. No, sir.

Q. Now, finally, has the Dewey Company, to your knowledge, ever had any agreement with any competitor in regard to water delivery?

46682 A. No, sir.

Q. Or in regard to the form or method of shipment that the company would use in distributing its cement?

A. No, sir.

Q. Mr. Moore, what does the Dewey Company do for freight rate information?

A. It has its own traffic department, obtains its freight information direct from the tariffs of the carriers.

Q. And how long has that been the practice of the company?

A. Twenty-eight years, to my knowledge.

Q. Has the manner and method of preparing that information changed since that time in your company?

A. No, sir.

Q. Have you seen to it that your company has kept up those compilations?

A. Yes, sir; I have, personally.

Q. Is the traffic department of the—the Dewey Company has a traffic department?

A. Yes, sir.

Q. Is that department under your supervision?

A. Yes, sir.

Q. What does it consist of, the organization that you have?

A. Outside of myself I have an assistant traffic manager and clerks varying from one to four additional, depending upon the amount of work to be handled.

46683 Q. Well, you say "depending upon the amount of work." Will you just tell us on what occasions or under what circumstances it varies?

A. Well, there are times when there are general readjustments in freight rates throughout the territory in which we operate that requires additional help to check the rates from the tariffs into our rate schedules.

Q. Well, tell us, Mr. Moore—you testified a mo-

46684 ment ago that the size of your traffic department varies, and I asked you the circumstances under which it varied, and you said under certain circumstances you have to add men. What did you mean by "add men," in addition to what?

A. I thought I said I had an assistant traffic manager; and when the occasion demanded I employed additional traffic clerks.

Q. Now, when changes in the tariffs occur, what do you do in your company in respect to your compilations, Mr. Moore?

A. We check the rates from the tariffs direct to our compilations.

Q. What has been the experience of the Dewey Company with respect to changes in tariff rates as to the advance notice, if any, that you receive?

A. Well, generally, the advance notice required under the Interstate Commerce Act is 30 days, but very frequently rates are made effective on short notice by special

46685 permission of the Interstate Commerce Commission or by permission of some State commission in the territory where we are operating.

Q. You say "short notice." You mean less than 30 days?

A. Oh, yes, frequently one, three, five, or ten days.

Q. You say one day. Is it as little as 24 hours?

A. Yes, sir.

Q. Now, tell us, if you will, what use your sales department makes of those compilations which you make up yourself?

A. They use them in figuring prices, ascertaining the price they will quote.

Q. In that connection do your compilations show the rates from competitive mills to destinations?

A. Yes, sir; as well as from our own mills.

Q. Well, for what producing points do you make such determinations of rates?

A. In addition to our own, we make them from all producing points at which there are mills located that we would have reason to believe we would be in competition with—in the particular destination area.

Q. Now, as to this use which you described, which your sales department makes of the freight rate compilations, is that the same or different than the use that you made of those compilations when you first came with the company?

A. It is the same.

Q. There has been no change?

46686 A. No, sir.

Q. Now, Mr. Moore, showing you Respondents' Exhibit, for identification, 359-A and B, will you tell us what that is?

A. It is a list of tariffs used by our company for rates on cement.

Q. You say "used." Do you mean currently?

A. Yes, sir; currently.

Q. How many tariffs are there on that, if you know, in that list?

A. I believe there are 67.

Q. Well, how does that number compare with the tariff—well, first, I will ask you, have any of the tariffs there listed been consolidations of other issues?

A. Yes, sir.

46689 Q. Now, Mr. Moore, do the tariffs covering the territory in which your company does business group the shipping points?

A. Very largely.

Q. Do you use in your daily business, Mr. Moore, in your department, committee or association tariffs?

A. Yes, sir.

Q. Do you use individual line tariffs?

A. Yes, sir.

Q. What difference, if any, is there between those tariffs, those two groups?

46690 A. The committee issues generally group producing points on one page carrying rates from a number of producing points in the territory covered by the

tariff to the same destinations, while individual lines' issues would in most cases name the rates to that same destination from one or two producing points on its line, making it necessary to refer to quite a few more individual lines issues tariffs than it would be necessary in the use of the committee issues.

Q. Well, does your company, prior to July 1, 1937—was your company still finding it necessary, or was your company still referring to individual issues?

A. Yes, sir.

Q. As well as committee issues?

A. Yes, sir; that is where the rate in the individual issues had not yet been consolidated into committee issues.

Q. Now, to shorten this up in a few brief questions, will you tell us with respect to the freight rate compilations which your company has prepared and kept up— Well, first, do those compilations,—I think you told us they do,—carry the rates from your own mills?

A. Yes, sir.

Q. And to what destinations?

A. All the destinations in our trade territory. I could roughly define it as west of the Illinois-Indiana State line, north of the Ohio River to the Rocky Mountains, and 46691 from the Canadian border to the Gulf of Mexico.

Q. Well, in showing these rates which you told us you do determine from other producing mills, has your company ever considered whether the other producing points were so-called basing mills or non-basing mills?

A. It makes no difference.

Q. Could you tell us of your own knowledge whether the company has had any agreement or understanding to recognize any mill as a basing mill?

A. It has not.

Q. Well, after coming with the company, which you told us you did in 1912, have you in preparing these compilations added new headline points to your rates?

A. Oh, yes, whenever a new mill came into operation, or a mill that had been in operation entered our trade territory, why, we added the rate from those mills.

Q. And have you had occasion during that time, from 1912 to 1937, to eliminate headline points?

A. Yes, sir; if mills go out of business, why, we eliminate them.

46692 Q. Have you ever had any contacts with your competitors with reference to the basis of correction of those headline points?

A. No, sir.

Q. Now, I want to ask you a question or two, Mr. Moore, with respect to routes. There has been a great deal of testimony in this record in the Commission's case and a great many exhibits dealing with this matter. In preparing the freight rate books, freight rate compilations, which you described, do you take into account all possible routes and combinations of routes?

A. It is not necessary to take into consideration the matter of routes. We are primarily interested in the lowest freight rate that applies.

Q. Well, in determining the lowest freight rate that applies, in preparing your compilations, do you take account of all possible routes?

A. Oh, surely, we give consideration to the routing of the traffic, how the traffic would move, but we, in our compilations, use the lowest rate we can find from a producing point to a given destination.

Q. Regardless of the route?

A. Yes.

Q. And do the freight rate compilations which you have described as prepared by your company contain any routings or have they ever contained any routings?

46693 A. No, sir; they have not.

Q. Well, what has been your experience as a traffic man, have you found it necessary to specify the route in order to get the benefit of the lowest available rate?

A. It is not necessary; no, sir.

Trial Examiner Norwood: Do you mean if you make a shipment without specifying a route, that the railroad is obliged to give it the lowest rate?

The Witness: So long as you put the rate in your bill of lading; yes, sir.

Trial Examiner Norwood: Oh, I see.

By Mr. Seeley:

Q. Now, has your company always determined the routing for its shipments by reference to the tariffs?

A. Yes, sir.

Q. Well, will you tell us what has been your—from your experience, has it been practicable, or would it be

practicable for you to prepare freight rate compilations that did contain the routings, or did show available routes from your mills?

A. No, it is impractical to have a freight rate
46694 compilation showing the routings for the reason that from our Davenport mill alone there are over 8,600 available routes to destinations in that mill's territory, and there are a greater number of routes from the Dewey mill to the Dewey destination territory because it covers a wider territory, larger territory, and there are more routes available in that territory due to lack of routing restrictions in the tariffs.

By Mr. Seeley:

Q. Now, Mr. Moore, incidental to—well, I will ask you: Has your company received freight rate books issued by The Cement Institute?

A. Yes, sir.

Q. What use, if any, has your company made of those books?

A. The only use we ever made of them was occasional checking against our own books at various points to see that we—our interpretations of the tariffs were as good as that of the Institute.

46696 (RESP. EX. 3475-A to 3475-K was offered and received in evidence.)

(RESP. EX. 3480-A to 3480-K was offered and received in evidence.)

46700 By Mr. Seeley:

Q. Mr. Moore, we were discussing the use that your company made of the freight rate books of The Cement Institute at such times as you have received them. What was your experience, such experience as you had, in your traffic department, in using those books to check your own compilations? Did you find them usually correct?

A. Our own compilations were usually the same as, or at least they were correct according to the tariffs from which the rates were taken.

Q. And at times did you find your own compilations in error?

A. Well, occasionally, you will find a rate that is wrong.

Q. Well, in any instance where the Dewey Company has found a difference between its own freight rate compilations and the Institute freight rate books, what did you do?

A. Checked against the tariff to find out which was correct, and inserted the correct rate in our compilation, if the rate there was not the correct one.

Q. By "correct," you refer to what?

46701 A. As the tariff so stated the rate. We never used the Institute rates as a guide as to what the correct rate actually was.

Trial Examiner Norwood: That is, in making the price, you mean?

The Witness: No.

Trial Examiner Norwood: In figuring the price?

The Witness: No; in our freight rate compilations.

By Mr. Seeley:

Q. Have you, Mr. Moore, ever used—ever at any time used the interpretation of the tariff in an Institute freight rate book which was at variance with what you found to be correct, or what you determined to be the correct interpretation of the tariff?

A. No, sir.

Q. Have you, Mr. Moore—that is, has your company ever considered the freight rate books of the Institute were necessary in your business?

A. No, sir.

Q. Showing your Respondents' Exhibits, for identification—first, I will ask you whether your company resigned from The Cement Institute?

A. Yes, sir.

46702 Q. Do you recall when that was?

A. About 1931, if I remember.

Q. After you resigned did you continue to subscribe to the freight rate books?

A. No, sir.

The witness identified Resp. Ex. 3596-A as an original letter dated June 3, 1932 from Mr. H. G. Lundborg, secretary of the Cement Institute, addressed to Mr. E. E. Tyler, president of Dewey; Resp. Ex. 3596-B as his letter in reply, written under instructions from Mr. Tyler.

(RESP. EX. 3596-A and 3596-B was offered and 46703 received in evidence.)

By Mr. Seeley:

Q. Mr. Moore, I have just a further question or two. Has your company had any understanding or agreement with competitors covering the Institute freight rate

books, or regarding the use that you may make of your own freight rate compilations?

A. No, sir.

Q. At any time?

A. No; it has not.

Q. Has your company ever had any agreement or understanding that it was expected to or required to use any Institute rate book in quoting prices?

A. No, sir.

Q. Have you ever had any agreement or understanding to use the rates in the Institute book until notified of a change by the Institute?

A. No, sir.

Q. Throughout the period up to July 1, 1937, was there any difference in the method or manner of quoting prices used by the Dewey Company, having in mind the period prior to the time that you joined The Cement Institute, and subsequent?

A. Well, no difference that I recall.

Q. Showing you, Mr. Moore, Respondents' Exhibit, for identification, 3594-A to D, I will ask you, if you 46704 can, to identify those papers.

A. 3594-A is a statement made up in my office by my assistant traffic manager, setting forth the effective dates of increases in intrastate rates in the States named in our sales territory, following increases granted by the Interstate Commerce Commission in Ex Parte 103.

3594-B is a similar statement showing the intrastate effective dates of rates following the order of the Interstate Commerce Commission in Ex Parte 115.

Trial Examiner Norwood: What date was that?

The Witness: 1936, December—the original rates were effective in 1935, expiring in 1936, and being later extended. That would be December 1, 1936.

A. (Continuing.) 3594-C is a similar statement covering the effective dates of the intrastate rates following the order of the Interstate Commerce Commission in Ex Parte 118, in 1937. A few of them became effective in 1938, intrastate.

3594-D is a similar statement covering effective dates of the intrastate rates following the order of the Interstate Commerce Commission in Ex Parte 123, in 1938.

By Mr. Seeley:

Q. Do I understand, Mr. Moore, that you prepared that list from the tariffs which you are using currently, or which you have used during the period covered by those orders?

A. Yes; my assistant traffic manager—

46705 Q. At your direction?

A. At my direction, compiled them from the tariffs in our files that were in effect at the time.

Q. Did your company, in preparing these compilations, note the changes in those intrastate applications at the time those orders were issued?

A. Yes, sir.

Q. And the rates used by your company reflected those changes?

A. Yes, sir; they did.

Q. Upon notification?

A. Yes, sir.

Mr. Seeley: I will say, Your Honor, that in offering these papers I am referring to a host of Commission's exhibits here. I will just give you the numbers in one group, which will indicate for Your Honor's information the relevancy of this offer:

Commission's Exhibits 3009 to 3042, inclusive.

Trial Examiner Norwood: Are there sufficient references here to enable us to check these rates?

The Witness: Yes, sir; they can check those from the tariffs.

46706 (RESP. EX. 3594-A to 3594-D was offered and received in evidence.)

Mr. Wooden: Just a moment, if you please.

Do I understand, Mr. Seeley, in offering this last exhibit, you are willing to state that it definitely negatives some evidence offered by the Counsel for the Commission?

46707 Trial Examiner Norwood: What is your statement about that?

Mr. Seeley: The statement is that Commission's Exhibits 3009 to 3042, consisting of numerous correction sheets of The Cement Institute, have been offered with a view to showing that the Respondents used the rates contained in The Cement Institute rate books and used them until notified of change by the Institute, and these exhibits were offered with a view to showing that these correction sheets did not—that it first went to that alleged agreement

or understanding that the Respondents, including this one, used rates which were not the correct rates on the dates in question, and used them until they received these correction notices represented by various Commission's exhibits, when, in fact, the intrastate application had been changed and affected prior to the receipt of those correction sheets.

46708 By Mr. Seeley:

Q. Mr. Moore, with respect to the freight rate compilations prepared by the Dewey Company in your traffic department, do they carry rates in terms of cents per hundredweight or cents per barrel?

A. Cents per hundredweight.

Q. The freight rate compilations, is my question.

A. Yes, sir.

Q. In connection with the use of those freight rate compilations, which you told us your sales department made, do you use any so-called conversion table?

A. I don't believe I understood that question, Mr. Seeley.

Q. I asked you whether your company made use of any so-called conversion table; I mean, in using the freight rate compilations which you prepared.

A. Yes.

Q. Where did you obtain the conversion table that you say you used?

46709 A. When I first went with the company I found that they did not have any short-cut method of determining the freight per barrel; so I immediately compiled a table for each bracket of freight rates that were in effect at the time, and translated it into cents per barrel, the freight per barrel, based on the gross weight of 380 pounds per barrel.

Q. And do I understand that that is the table that your company uses in connection with its freight rate compilations?

A. It is the same form of table. It has been revised in recent years to take care of refinements in freight rates. By that, I mean percentage increases and reductions in freight rates have caused a greater number of rates to be in the tariffs at different times than there were originally. In other words, we only had a half a cent and full cent rates originally, and subsequently, through the percentage increases and reductions, rates of a quarter of a cent and a third of a cent and three-fourths of a cent, and so forth,